

Cooperative Purchasing Agreement (#210101 -- Notification Systems)

This Cooperative Purchasing Agreement (this “Agreement”) is by and between **Blackboard Inc. (“Blackboard”)** with address at 11720 Plaza America Drive, Reston, Virginia 20190 and **The Interlocal Purchasing System (“TIPS”)**, with address at 4845 Highway 271 North, Pittsburg, TX 75686 whereby TIPS wishes to permit its Members (each a “Member” or “Customer”) to license Blackboard products and purchase Blackboard services.

Accordingly, the Parties hereby agree as follows:

The TIPS Vendor Agreement, attached as Exhibit C, and Blackboard’s proposal thereto are hereby incorporated by reference in its entirety as if copied verbatim and is enforceable upon the parties except as amended herein below.

WHEREAS TIPS wishes to serve as a contract holder and make available the contract with Blackboard for piggybacking by TIPS members that are PK-12 public, charter or private schools to purchase Blackboard Solutions (as defined below).

WHEREAS It is understood and agreed by the parties that The Interlocal Purchasing System (“TIPS”) contract #181204 is hereby replaced with this new TIPS contract #210101 for Notification Systems, including Web Community Manager, Mobile App, Mass Notification, Ally, Collab, Open LMS, Learn, PL bundle, Authentica, training and services.

NOW THEREFORE, in consideration of the mutual promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. Definitions.

a. “Authorized Territory.” Shall mean TIPS members:

TIPS Members: The Interlocal Purchasing System currently serves entities such as state and local governments and non-profit TIPSs, including:

- PK-12 school districts
- Charter Schools
- Private Schools
- Emergency Services Districts
- Colleges and Universities (State and Private)
- Cities/Municipalities Counties/Parishes
- Other entities with legislated purchasing/bidding requirements

For purposes of clarification, the pricing listed in Exhibit A of this Agreement are available only to K-12 entities. Should the parties agree to extend this Agreement to other TIPS Members then, Exhibit A shall be revised to include the relevant pricing.

- #### **b. TIPS “Confidential Information.”** shall include, but not limited to, this Agreement, the Blackboard Solutions, and all documents relating to the provision of the Blackboard Solutions including but not limited to the training guides and manuals.

- c. **“Customer.”** Any TIPS Member that purchases Blackboard Solutions pursuant to this Agreement. Each Customer must execute or otherwise agree to the applicable Vendor End-User Documents in order to be an authorized user of Blackboard Solutions.
- d. **“Blackboard End-User Documents.”** All agreements and other documents that are required by Blackboard to be executed or delivered by the end user of the Blackboard Solution, which is attached hereto as Exhibit B.
- e. **“Blackboard Solution(s).”** Blackboard’s solutions or platforms set forth in Exhibit A hereto and incorporated by this reference.

2. **TIPS Obligations.** During the term of this Agreement, TIPS will have the following obligations:

- a. **Representations and Obligations.** TIPS represents and warrants that: (a) it will not make representations to third parties about the Blackboard products and services, absent Blackboard’s prior written approval; (b) it will not enter into agreements on behalf of Blackboard or otherwise act as an authorized agent to bind Blackboard; (c) it is under no contractual commitments inconsistent with its obligations to Blackboard or that would preclude it from performing the duties required by this Agreement, and that it will fully disclose potential or actual conflicts of interest and/or dual commissioned roles to Blackboard and the applicable prospective client; (d) it will, inform Blackboard of any business relationship, circumstance, or situation that could prejudice the conduct of Blackboard’s activities or place Blackboard in an adverse situation; and (e) it will not violate, or cause Blackboard to violate, any law, rule, or regulation including lobbying and procurement rules. Likewise, Blackboard represents and warrants that: (a) it will not enter into agreements on behalf of TIPS or otherwise act as an authorized agent to bind TIPS; (b) it is under no contractual commitments inconsistent with its obligations to TIPS or that would preclude it from performing the duties required by this Agreement, and that it will fully disclose potential or actual conflicts of interest and/or dual commissioned roles to TIPS and the applicable prospective client; (c) it will, inform TIPS of any business relationship, circumstance, or situation that could prejudice the conduct of TIPS’s activities or place TIPS in an adverse situation; and (d) it will not violate, or cause TIPS to violate, any law, rule, or regulation including lobbying and procurement rules.
- b. **Primary Contact.** TIPS will maintain a primary contact (**“Primary Contact”**) for the TIPS program in order to facilitate communications between Blackboard and TIPS regarding the TIPS program. The Primary Contact will receive all communications regarding the TIPS program, and TIPS may not choose to be excluded from such communications. TIPS shall provide in writing the name and contact information of the Primary Contact to Blackboard from time to time.
- c. **Current Information.** TIPS will maintain the accuracy of the information provided to Blackboard as part of TIPS program, will promptly notify Blackboard of any updates to such information, as well as regularly update or supplement such information upon reasonable request by Blackboard.
- d. **TIPS Contact Update.** As requested by Blackboard, TIPS must update its contact and other requested profile information in the manner reasonably requested by Blackboard.
- e. **Professional Conduct.** TIPS will conduct its business in a professional and high quality manner. TIPS shall at all times comply with good business practices and all applicable laws and regulations.
- f. **Cooperation.** TIPS acknowledges: (i) that certain services or obligations of Blackboard may be dependent on TIPS providing, to the extent permitted by law, certain data, information, or assistance to Blackboard (**“Cooperation”**), and (ii) that such Cooperation will be essential to Blackboard’s performance of obligations under this Agreement. TIPS agrees that any delay or failure by Blackboard to perform its obligations that is caused in whole or in part by TIPS’s failure to provide the timely Cooperation reasonably requested by Blackboard will not be deemed to be a breach of Blackboard’s obligations under this Agreement.
- g. **Marketing Assistance.**
 - i. **Promotional Materials.** All advertising or promotional material used by TIPS to promote Blackboard Solutions must be

approved by Blackboard prior to TIPS' use.

- ii. **Product Demonstrations.** Product demonstrations to Customers will be conducted only by certified members of the Blackboard sales and marketing teams. Blackboard may also provide Customers with a free trial of Blackboard Solutions for evaluation purposes for a limited period of time to be determined by Blackboard in its sole discretion.

h. **Pricing and Terms.**

- i. The pricing for Blackboard Solutions offered by TIPS to Customers is set forth in Exhibit A and shall remain in effect for the Initial one (1) year Term of the Agreement and subject to pricing and products updates thereafter during the three (3) term or if exercised, addition one (1) year extended term, of the Agreement. The pricing offered to Customers pursuant to this Agreement during the first year of this Agreement shall not exceed the TIPS price for the applicable Blackboard Solution which is set forth in Exhibit A hereto, exclusive of any other discounts or promotions that may be offered or available to the Customer.
- ii. TIPS may share the Blackboard Standard Price List with TIPS Members but otherwise shall keep the Blackboard Standard Price List strictly confidential and shall not provide a copy to any third party per instructions provided to TIPS on the submitted Confidentiality Claim Form, which may be updated at will by Blackboard and submitted to TIPS.
- i. **Order Acceptance.** All orders pursuant to the TIPS contract shall be promptly forwarded to Blackboard, either by TIPS or the Customer, for written acceptance or rejection by Blackboard. In connection with each such order, the Customer's right to use a Blackboard Solution shall be subject to the Customer's execution or acceptance of all applicable Blackboard End-User Documents as modified for TIPS members and attached hereto and other applicable terms and conditions associated with the Blackboard Solution.
- j. **Data Protection.** To the extent TIPS provides Blackboard with any personal information collected by TIPS or TIPS' authorized third parties (including information, without limitation, collected from end users), TIPS shall ensure that such information is collected and maintained in accordance with applicable data protection laws and regulations and that it has the right to provide such information to Blackboard.

3. **Blackboard Obligations.** During the term of this Agreement, Blackboard will have the following obligations:

- a. **Data Protection.** To the extent TIPS provides Blackboard with any personal information collected by TIPS or TIPS' authorized third parties (including information, without limitation, collected from end users), Blackboard shall ensure that such information is maintained in accordance with applicable data protection laws and regulations.

4. **Initial Term.**

This Agreement shall remain in effect for approximately three (3) years beginning on the date of execution by the Parties. unless terminated earlier in accordance with Section 6 below. The expiration date of the initial three (3) year term of this Agreement is September 30, 2022 but may be extended to September 30, 2023 if the additional option year is exercised by the parties by written agreement. The additional optional extension year, or year four (4) of the agreement, is only optional if TIPS decides to offer the additional year extension to Blackboard.

5. **Pricing and Payment.**

- a. **Collection and Payment of Fees.** All amounts due from the Customer in connection with the purchase of Blackboard Solutions shall be collected by Blackboard.

- i. TIPS administrative fee. All TIPS sales realized or generated under or as a consequence of the TIPS awarded contract shall include an Administrative Fee of two percent (2%). Customers shall reference the TIPS contract number on their purchase orders at the time of purchase. As the administrator of the contract, Blackboard must include the following data for each net sale or purchase through this contract:
 - Invoice date
 - Name of TIPS member (school, district, or organization)
 - Invoice number
 - Names and quantities of products purchased
 - Single unit purchase price
 - Total price
- ii. Administrative Fee Payments. During the term of this contract, Blackboard will submit quarterly accounting and remit administrative fee payments to TIPS within 30 days following the end of each calendar quarter in accordance with the terms outlined in the following payment schedule. The administrative fees percentage shall not increase during the life of the contract unless otherwise agreed to by the parties.

Payment Schedule
October 31
January 31
April 30
July 31

- b. **Taxes.** TIPS represents that it is a governmental agency not subject to any taxes (TIPS is tax exempt) and that no taxes are due with respect to the purchase of Blackboard Solutions pursuant to this Agreement. TIPS members may be tax exempt and the member shall provide to Blackboard Solutions required tax exemption documentation at the time of sale. TIPS will not be responsible for any taxes except those TIPS or ESC Region 8 is required to render to the appropriate jurisdictional agencies according to applicable law.

6. Termination.

- a. **Termination with Cause.** In the event of a material breach of this Agreement, this Agreement may be terminated by the non-breaching party upon ten (10) business days' advance written notice to breaching party setting forth the particulars of the breach. Such termination will not take effect and this Agreement will remain in full force provided the breaching party cures such breach within such ten (10) business-day period.
- b. **Termination without Cause.** Either party may terminate this Agreement without cause with sixty (60) days' prior written notice. Such termination shall not result in a termination of any agreements or other Blackboard End-User Documentation between Blackboard and any Customer.
- c. **TIPS may terminate this Agreement with no prior notice upon assignment of the Agreement to another party by Blackboard.** Such termination shall not result in a termination of any agreements or other Blackboard End-User Documentation between Blackboard and any Customer.
- d. **Payment Breach.** This Agreement may be terminated immediately, at the sole election of a party entitled to payment, if the other party fails to make a payment due hereunder and such payment is not made within five (5) days of receipt of notice of nonpayment.
- e. **Actions Following Termination.**
 - i. **Return of Property.** Upon request, each party will deliver to the other any property or information, including, without

limitation, any Confidential Information, of the other in its possession or control that it obtained in connection with the TIPS Program. Property shall be returned in good condition, reasonable wear and tear excepted. Back-Ups and data shall be returned in usable condition and in the format specified by Blackboard. TIPS and ESC Region 8 are permitted to keep information and materials required to comply with records retention laws and regulations.

- ii. **Discontinued Information.** Blackboard will remove any information describing TIPS from the Blackboard corporate website.
- iii. **Rights and Licenses.** All rights and any license granted to TIPS to promote and sell the Blackboard Solutions will cease. Any other agreements between TIPS and Blackboard will also terminate immediately.
- f. **Effect of Termination.** Neither party will be liable for any damages arising out of the termination of this Agreement, provided that such termination or expiration will not affect any right to recover:
 - i. Damages sustained by reason of material breach; or
 - ii. Any payments which may be owing under this Agreement.

7. Indemnification; Disclaimers.

- a. **Blackboard Indemnification.** Blackboard shall indemnify and hold harmless TIPS against any and all liabilities, claims, demands, damages (including reasonable attorneys' fees and costs) arising out of or resulting from the infringement or violation of any third party's trade secrets, proprietary information, trademarks, copyright, or patent rights in connection with Blackboard's performance of the services and TIPS's or any Customer's use of Blackboard Solutions or Legacy Products in accordance with the this Agreement or the applicable Blackboard End-User Documents, provided that Blackboard shall have no indemnity obligation with respect to any infringement or violation of such third-party rights to the extent caused by (i) any modification of the Blackboard Solutions or Legacy Products made by or for TIPS or a Customer (other than by Blackboard), (ii) any use of the Blackboard Solutions or Legacy Products in combination with items not furnished, specified or reasonably anticipated by Blackboard or contemplated by this Agreement or an applicable Blackboard End-User Documents, (iii) a breach of this Agreement or any applicable Blackboard End-User Document, (iv) the failure of TIPS or a Customer to use corrections or modifications provided by Blackboard, or (v) third party software.
- b. **TIPS Indemnification.** To the extent permitted by the laws and the Constitution of the State of Texas, TIPS shall defend, indemnify and hold harmless Blackboard from and against any and all liabilities, claims, demands, damages (including reasonable attorneys' fees and costs) to the extent caused by (i) any modification of the Blackboard Solutions or Legacy Products made by or for TIPS (other than by Blackboard), without the permission or authorization of Blackboard, (ii) any unauthorized use of the Blackboard Solutions or Legacy Products, including, without limitation, use of the Blackboard Solutions or Legacy Products in combination with items not furnished, specified or reasonably anticipated by Blackboard or contemplated by this Agreement or an applicable Blackboard End-User Document and any violation of the Telephone Consumer Protection Act or similar laws, (iii) a breach of this Agreement or any applicable Blackboard End-User Document, (iv) the failure of TIPS to use corrections or modifications provided by Blackboard, or (v) third party software. To the extent permitted by the laws and the Constitution of the State of Texas, TIPS shall be solely responsible for, and shall defend, indemnify and hold Blackboard and its successors, assigns, directors, shareholders, officers and employees free and harmless from, all claims, damages or lawsuits (including attorneys' fees) arising out of the acts or omission of TIPS, its employees, or agents. To the extent permitted by the laws and the Constitution of the State of Texas, TIPS agrees to reimburse any and all costs and attorneys' fees and expenses incurred by such indemnified parties in successfully enforcing this Section 7(b), whether by prosecution of a lawsuit or otherwise.
- c. **Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES, IF ANY, MADE TO THE END USER IN THE APPLICABLE

BLACKBOARD END-USER DOCUMENT, BLACKBOARD MAKES NO OTHER WARRANTIES RELATING TO BLACKBOARD SOLUTIONS, EXPRESS OR IMPLIED. BLACKBOARD DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE AND NON-INFRINGEMENT. NO PERSON IS AUTHORIZED TO MAKE ANY OTHER WARRANTY OR REPRESENTATION CONCERNING BLACKBOARD COMPLETE OR THE MEDIA ON WHICH PRODUCTS ARE SUPPLIED. TIPS WILL MAKE NO WARRANTY, EXPRESS OR IMPLIED, ON BEHALF OF BLACKBOARD.

8. Limitation of Liability/Consequential Damages.

- a. **Limitation of Damages.** Neither party shall be liable to the other under this Agreement or any Blackboard End-User Documentation except for actual damages plus out-of-pocket expenses. In no event, shall either party be liable to the other for loss of use, or for incidental, special, or consequential damages or for similar damages, even if advised of the possibility of such damages. The total aggregate liability of Blackboard for claims asserted by TIPS or any Customer under or in connection with this Agreement or any Blackboard End-User Document, regardless of the form of the action or the theory of recovery, shall be limited to the aggregate amounts received by Blackboard pursuant to the terms of this Agreement. There is no limit to the liability for damages of Blackboard in the event of a finding of liability for personal injury or tangible property damage claims arising from the negligence of Blackboard.
- b. **Delay in Performance.** Except as expressly provided in this Agreement and except for a party's obligation to pay under this Agreement, neither party shall be liable for any delay in performance due to causes beyond its reasonable control and without its fault or negligence. However, the party whose performance is delayed shall use its best efforts to notify the other party of such delay and to minimize its effect.

9. General Provisions.

- a. **Blackboard Distribution Rights.** TIPS's right to promote Blackboard Solutions is non-exclusive. Nothing in this Agreement or any Blackboard End-User Document shall be construed as limiting in any manner Blackboard or any representative or agent of Blackboard marketing or distribution activities to Customers.
- b. **Confidential Information.** A party receiving Confidential Information (the "**Recipient**") may use it only for the purposes for which it was provided under this Agreement. Confidential Information may be disclosed only to employees or contractors with a need to know who are obligated to the Recipient under similar confidentiality restrictions and only for the purposes for which it was provided under the relevant Agreement. Confidential information does not include information which:
 - i. is rightfully obtained by the Recipient without breach of any obligation to maintain its confidentiality;
 - ii. is or becomes known to the public through no act or omission of the Recipient;
 - iii. the Recipient develops independently without using or referencing the Confidential Information of the other party;
 - iv. is disclosed in response to a valid court or governmental order, if the Recipient has given the other party prior written notice and provides reasonable assistance; or
 - v. is public information pursuant to FOIL or any other statute or regulations applicable to the TIPS or any Customer.
- c. **Publicity.**

Neither party may issue a press release relating to this Agreement or its relationship with the other party without such party's prior written consent. Neither party will make any claim or representation about the other party or its products or services other

than as currently published by such other party.

d. **Trademark and Logos.**

i. **Trademarks.**

- 1) TIPS may refer to Blackboard Solutions by their associated names, provided that such references are not misleading and comply with Blackboard policies.
- 2) TIPS may not remove or alter any Blackboard trademarks, service marks, company names, Internet addresses, domain names, or any other similar designations (collectively, "Blackboard Trademarks"), nor may it co-logo Blackboard products or services without the prior written approval of Blackboard. TIPS agrees that any use of Blackboard Trademarks by TIPS will inure to the sole benefit of Blackboard.
- 3) TIPS agrees not to incorporate any Blackboard Trademarks into TIPS's trademarks, service marks, company names, Internet addresses, domain names, or any other similar designations.

ii. **Blackboard Trademark Rights.**

- 1) TIPS agrees that as between TIPS and Blackboard, Blackboard is the sole owner of all right, title and interest in and to the Blackboard Trademarks and all associated goodwill.
- 2) TIPS is granted no right, title or license to, or interest in, any Blackboard Trademark.
- 3) TIPS agrees not to challenge Blackboard ownership or use, or the validity, of the Blackboard Trademarks, or attempt to adopt or register any mark identical or confusingly similar to any of the Blackboard Trademarks.
- 4) Should TIPS acquire (by operation of law or otherwise) any rights in any Blackboard Trademark, it shall immediately at no expense to Blackboard assign to Blackboard all such rights and associated goodwill, applications and registrations.
- 5) TIPS will promptly report to Blackboard any misuse or unauthorized use of the Trademark that comes to the TIPS's attention.
- 6) TIPS will cooperate with Blackboard and take all reasonable actions required to assist Blackboard to secure, protect and maintain ownership rights in the Blackboard Trademarks worldwide, at Blackboard's cost, including giving prompt notice to Blackboard of any potential infringement thereof and cooperating with Blackboard in the preparation, execution and recording of legal documents necessary to register or otherwise protect the Blackboard Trademarks.

iii. **Logo Usage.** Blackboard grants to TIPS a limited, non-exclusive, non-transferable, royalty-free, worldwide permission to use an applicable Blackboard logo (the "**Logo**"), if any, to refer or relate to Blackboard TIPS Program:

- 1) in the exact form provided by Blackboard;
- 2) in pre-sale advertising and marketing materials that promote Blackboard Solutions and prominently display TIPS's own corporate name and logo;
- 3) on TIPS's web site, as a link to the Blackboard home page or to an Internet URL to be provided by Blackboard;
- 4) in accordance with any Blackboard Trademark and Logo usage requirements as established by Blackboard from time to time and/or graphics standards distributed by Blackboard;
- 5) in a manner that is truthful and not misleading, and that does not use the Logo to imply any relationship with, or endorsement or sponsorship by, Blackboard that is not true;
- 6) in a manner that avoids disparaging statements or implications about Blackboard or Blackboard Solutions;
- 7) on materials that are in compliance with all applicable laws and governmental regulations; and

- 8) Blackboard may change the Logo or create new logos to replace the Logo currently in use. Upon reasonable notice from Blackboard, TIPS shall promptly modify its use of the Logo to conform to any such changed or new Logo.

iv. Injunctive Relief.

- 1) TIPS agrees that a breach of the obligations in Section 9 are likely to cause irreparable harm to Blackboard for which damages would not be an adequate remedy.
 - 2) Therefore, in addition to its rights and remedies otherwise available at law, including, without limitation, the recovery of damages for breach of this Agreement, Blackboard shall be entitled to: (i) immediate equitable relief, specifically including, but not limited to, both interim and permanent restraining orders and injunctions; and (ii) to such other and further equitable relief as the court may deem proper under the circumstances.
- e. **Restricted Activities; Export Controls.** TIPS agrees to comply with all export laws and restrictions and regulations of the United States or foreign agencies or authorities, and not to export or re-export Blackboard Solutions or any direct product thereof in violation of any such restrictions, laws or regulations, or without all necessary approvals.
 - f. **TIPS or Constituent Modifications.** Any modifications or other improvements to the Blackboard Solutions or any intellectual property related thereto developed by TIPS or any Customer will be the sole property of Blackboard.
 - g. **Notices.** All notices given or made in connection with this Agreement will be in writing. Delivery of written notices will be effective: (i) on the fifth business day after the date of mailing, if delivered by registered or certified mail, postage prepaid, (ii) upon delivery to a senior manager of the recipient, if sent by hand delivery, (iii) upon delivery, if sent by prepaid courier, with a record of receipt, or (iv) on the next day after the date of dispatch, if sent by facsimile or telecopy (with a copy simultaneously sent by registered or certified mail, postage prepaid, return receipt requested). All deliveries will be made to the addresses set forth in this Agreement. Any party may change the address to which notices to it (or copies of such notices) will be addressed (or provide) by giving notice of that change to the other party in accordance with this Section. In the case of notices to Blackboard, send to Blackboard Inc., Attn: General Counsel, 11720 Plaza America Drive, Reston, Virginia 20190. In the case of notices to TIPS, send to ESC Region 8/The Interlocal Purchasing System (TIPS) Attention Rick Powell 4845 Highway 271 North Pittsburg, TX, 75686.
 - h. **Captions.** All section captions and titles are for reference only and do not form part of this Agreement.
 - i. **Assignment.** This Agreement and all the rights and powers granted by this Agreement will bind and inure to the benefit of the parties and their respective permitted successors and assigns. TIPS will not assign this Agreement or any right or interest under this Agreement, nor delegate any work or obligation to be performed under this Agreement, without Blackboard's prior written consent. Blackboard agrees to notify TIPS of their assignment of any rights or privileges under this agreement and such notice shall not be unreasonably withheld. Any attempted assignment or delegation in contravention of this Section will be void and ineffective.
 - j. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of Texas without regard to its conflict of laws doctrines.
 - k. **Venue.** Venue for any conflict resolution with TIPS shall be in a state or federal court of competent jurisdiction in Camp County, Texas.
 - l. **Conflict Resolution.** In the event of any controversy or claim arising out of or relating to this Agreement, or a breach thereof, the parties will consult and negotiate with each other and attempt to reach a satisfactory solution.
 - m. **Relationship of Parties.** The relationship of Blackboard and TIPS is that of independent contractors. This Agreement is not intended to create a partnership, franchise, joint venture, agency, co-ownership or a fiduciary or employment relationship. Neither party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor. Neither Blackboard nor TIPS will have any right or authority to bind the other party or to assume or create any obligation or responsibility,

expressed or implied, on behalf of the other party, or in the other party's name. All financial obligations associated with TIPS are the sole responsibility of TIPS.

- n. **Amendment and Waiver.** Except as otherwise provided herein, to be effective, any amendment, supplement or waiver under this Agreement must be in writing and signed by authorized representatives of both parties. Neither the failure of either party to exercise any right, power or remedy provided under this Agreement or to insist upon compliance by any other party with its obligations under this Agreement, nor any custom or practice of the parties at variance with the terms of this Agreement, will constitute a waiver by such party of its right to exercise any such right, power or remedy or to demand such compliance. Additional terms or conditions in a purchase order or other ordering document shall not be binding upon Blackboard unless and until executed by Blackboard expressly indicating Blackboard's intent to be so bound.
- o. **Cumulative Remedies.** The rights and remedies of the parties are cumulative and not exclusive of the rights and remedies that they otherwise might have now or hereafter at law, in equity, by statute or otherwise.
- p. **Entire Agreement.** This Agreement sets forth all of the promises, covenants, agreements, conditions and undertakings between the parties with respect to the subject matter hereof.
- q. **Third Party Beneficiaries.** No person other than the parties hereto will be a third-party beneficiary of this Agreement or have any rights hereunder except as otherwise provided in this Agreement.
- r. **Invalidity.** If any provision or portion thereof of this Agreement is held to be unenforceable or invalid, the remaining provisions and portions thereof shall nevertheless be given full force and effect, and the parties agree to negotiate, in good faith, a substitute valid provision which most nearly effects the parties' intent in entering into this Agreement. WITHOUT LIMITING THE FOREGOING, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTY OR EXCLUSION OF DAMAGES IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER SUCH PROVISION. FURTHER, IN THE EVENT THAT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SHALL REMAIN IN EFFECT.
- s. **Continuing Obligations.** The following obligations will survive the expiration or termination of this Agreement: (i) any and all warranty disclaimers, limitations of liability and indemnities granted by either party herein, (ii) any covenant granted herein for the purpose of determining ownership of, or protecting proprietary rights, including without limitation, the confidential information of either party, or any remedy for breach thereof, and (ii) the payment of any money the rights to which had fully accrued at the time of termination.
- s. TIPS members purchasing Blackboard goods or services pursuant to TIPS RFP for Web Hosting, Services, or Content Management shall reserve the right to negotiate with the seller, Blackboard, and amend or append the Blackboard End User Document as agreed by the parties to the transaction.
- t. Automatic Renewal clauses in any Blackboard End User Document, amendment or otherwise creating an automatic renewal for a contract or agreement pursuant to this contract and TIPS RFP for Web Hosting, Services, or Content Management without the express written permission of the TIPS member is void. As such, any Renewal Term shall be mutually agreed upon by Blackboard and the TIPS member.

IN WITNESS WHEREOF, TIPS and Blackboard have duly executed this Agreement as of April 21, 2021.

BLACKBAOD INC.

THE INTERLOCAL PURCHASING SYSTEM (“TIPS”)

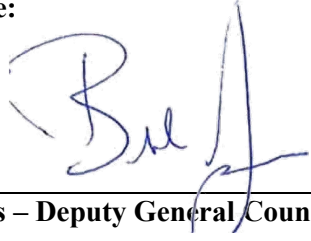
Signature: 	Signature:
Bill Jones – Deputy General Counsel	
Date: APRIL 21, 2021	Date:

EXHIBIT B

BLACKBOARD® Master Agreement for All Products and Services

The terms contained herein (the "**Master Agreement**") and any accompanying Blackboard ordering document (an "**Order Form**"), or the acceptance by Blackboard of an acknowledgement form or purchase order form referencing an Order Form incorporating these terms form the entire agreement ("**Agreement**") between the entity listed in any Order Form (hereafter, "**Customer**" or "**you**") and the Blackboard entity listed in any Order Form (hereafter, "**we**", "**us**" or "**Blackboard**"), with respect to the products and/or services listed in any Order Form ("**Products and Services**").¹

1. APPLICABILITY OF THIS MASTER AGREEMENT

This Agreement governs: (a) your rights to access and use software licensed on a term or perpetual basis ("**Software**"); (b) your rights to access and use software made available under a software-as-a-service delivery model for a term ("**SaaS Services**"); (c) your rights to support and/or maintenance services which you purchase or are otherwise entitled to receive other than Student Support Services ("**Support**"); (d) any professional services ("**Professional Services**"); (e) any managed hosting services, cloud hosting services or other hosting services ("**Hosting Services**"); (f) any hardware and/or firmware ("**Equipment**"); and (g) any student support services ("**Student Support Services**").

2. RIGHTS OF ACCESS AND USE.

2.1 License to Use SaaS Services or Hosting Services. With respect to SaaS Services or Hosting Services, for the Term (as defined in Section 9.1), we grant you a non-exclusive, non-transferable, non-sublicenseable license to access and use the SaaS Services (or, as applicable, Hosting Services) made available by Blackboard to you on a remote-access, subscription basis via the Internet solely in support of your operations.

2.2 License to Use Software Provided on a Perpetual or Term Basis. With respect to Software, for the Term, or where a license is specified as "perpetual", on an ongoing basis unless and until terminated as provided herein, we grant you a non-exclusive, non-transferable, non-sublicenseable, license to use the Software on a Designated Configuration solely in support of your operations. A "**Designated Configuration**" shall mean a configuration of hardware and software which is supported by us and on which the Software is operated by or for you, which may include a configuration on your premises or a configuration managed by us for you.

2.3 Evaluation License. If Customer is provided an Evaluation License, Blackboard grants you a limited, non-exclusive, non-transferable non-sublicenseable license to install and use one (1) Evaluation copy of the Software, SaaS Services or Hosting Services, as applicable, ("Evaluation License") subject to the obligations herein and solely in connection with your internal evaluation of the Software, SaaS Service or Hosting Services and not for any production or commercial purpose.

2.4 API License. If you are purchasing an application programming interface ("**API**") license, other than a Learn API as defined below, we grant you a limited, non-exclusive, revocable, non-sublicensable, non-transferable license to access each API set forth in the Order Form. The API(s) are provided in the form of a web service that enables a "connection" into our servers. We will provide you with the information necessary to enable your secure use of the API(s). You may not use or install the API(s) for any other purpose without our written consent, and may not copy, rent, adapt, disassemble, lease, assign, sublicense, reverse engineer, modify or decompile, the API(s) or any part thereof. We reserve the right to limit the number and/or frequency of API requests or take other actions necessary to protect the integrity of our services.

2.5 Authorized Users. You agree to only grant access to the SaaS Services, Hosting Services, and/or Software to those individuals defined in the Terms Applicable to Specific Products and Services, below ("**Authorized Users**").

2.6 License Restrictions. You may not use the Software, Hosting Services, or SaaS Services beyond the usage, storage or other applicable limitations set forth in the Agreement. In addition, unless otherwise expressly permitted in the Agreement, without our prior written consent, you will not: (i) permit any third-party to install, configure, access, use or copy all or any portion of the Software, Hosting Services, or SaaS Services; (ii) modify, reverse engineer, decompile, disassemble, distribute, create derivative works based on, copy or otherwise exploit all or any portion of the SaaS Services, Hosting Services, or Software except as expressly permitted by applicable law, rule or regulation ("**Law**"); (iii) sell, sublicense, rent, lease, or otherwise transfer rights to all or any portion of the SaaS Services, Hosting Services, or Software; (iv) use the SaaS Services, Hosting Services, or Software to operate in or as a time-sharing, outsourcing or service bureau environment or in any manner which supports the business of a third party; (v) obscure, remove or alter any intellectual property rights notices or markings on the SaaS Services, Hosting Services, or Software; or (vi) use the SaaS Services, Hosting Services, or Software in any manner which could (a) pose a security risk or (b) disable, overburden, damage, or impair the performance or operation of the computing environment on which the SaaS Services, Hosting Services, or Software are hosted (including where such use interferes with any other customer's use thereof).

¹ If you have previously purchased products and/or services with Blackboard, unless expressly stated in the Order Form of this Agreement, your prior agreement(s) governing such products and/or services shall continue in effect with regard to such products and/or services, and this Agreement shall govern the Products and Services reflected in the Order Form of this Agreement.

2.7 Delivery. Delivery shall be deemed complete when Blackboard notifies you that you have the ability to access the Software, Hosting Services, or SaaS Services.

3. SUPPORT, SERVICE LEVEL AGREEMENTS, AND OVERAGES

If you license or are otherwise eligible to receive Support, or are eligible for service level agreements, or you exceed contract limits, such Support (or service level or overage rate, as applicable) will be provided as described in the Blackboard Customer Support Services Guide ("**Services Guide**") service level agreement, overages and/or specifications document located at <https://blackboard.secure.force.com/public/articleview?id=kA570000000PB0o> for the relevant Products and Services. As stated in these service level agreements or other Customer Support documents, overages may be charged for additional Customer usage beyond the applicable limitations, and for additional storage and/or bandwidth needed to support excess Customer usage. Our failure to satisfy a service level shall not be a breach of this Agreement and, your sole and exclusive remedy (if any) in such event shall be as expressly set forth in the applicable service level agreement. With respect to SaaS Services, you will receive, or we will make available for you to receive, all applicable updates, application packs, and releases that we make generally available during the Term. We reserve the right to discontinue any Product or Service during the Term for any reason, but in such even we will notify you and, as Customer's sole and exclusive remedy, Blackboard shall provide a pro rata refund for any unused portion of the Products and Services, as applicable.

4. PROPRIETARY RIGHTS

4.1. Customer Property. Customer Property is and shall remain your sole and exclusive property. "**Customer Property**" means all graphic user interface, text, content, images, video, music, designs, products, computer programs, drawings, documentation and other materials of any kind posted, submitted, provided or otherwise made available to us by you or an Authorized User in connection with the Products and Services. Customer Property may also contain Personal Information which is defined in Section 5.

4.2. Blackboard Property. Subject to the limited rights expressly granted hereunder, we and our licensors or suppliers own all right, title and interest in and to each of the Products and Services, along with all related documentation, materials, content, and specifications, and all modifications, enhancements, improvements, and all derivative works thereto. We also retain all right, title and interest to any work product or other intellectual property developed and/or delivered in connection with our provision of any services or the performance of any obligations hereunder. Any intellectual property rights that we do not expressly grant to you are expressly reserved by us.

4.3. Blackboard Use of Customer Property. During the term of the Agreement, you grant to us, our affiliates, and our third-party service providers, solely to perform our obligations hereunder, a non-exclusive, royalty-free license to modify, reproduce, display, combine, copy, store, transmit, distribute, and otherwise use the Customer Property. You authorize, subject to the terms of the Agreement and to the extent permitted by Law, Customer Property to be accessed and processed by us, our affiliates, and/or our third-party service providers in countries other than the jurisdiction from which the Customer Property was originally collected.

4.4. Content Restrictions. You agree not to use any Product or Service to store, display, or transmit content that is deceptive, libelous, defamatory, obscene, racist, hateful, infringing or illegal, and to the extent Authorized Users exercise the rights granted to you under this Agreement, you represent and agree that you will ensure that such Authorized Users will also comply with the obligations applicable to such exercise set forth in this Agreement. We take no responsibility and assume no liability for any Customer Property that you, an Authorized User, or third party out of our control posts, submits, displays, or otherwise makes available via the Products or Services, and you agree that we are acting only as a passive conduit for the online distribution and publications of such Customer Property.

4.5. Removal of Content. If we determine in good faith that any Customer Property could (a) pose a material security risk, (b) be deceptive or perceived as libelous, defamatory, obscene, racist, hateful, or otherwise objectionable, or (c) give rise to (i) Blackboard liability, or (ii) a violation of Law or the terms or restrictions of the Agreement, then we may remove the offending Customer Property and shall notify you of such removal, suspend your and/or your Authorized Users' use of the Products and Services, and/or pursue other remedies and corrective actions.

4.6. Other Rights. You hereby grant to us the limited right to use your name, logo and/or other marks for the sole purpose of listing Customer as a user of the applicable Products and Services in our promotional materials unless and until you provide us a written request to discontinue such use.

4.7. DMCA Notice and Takedown Policy. It is our policy to respond to alleged infringement notices that comply with the Digital Millennium Copyright Act of 1998 (the "**DMCA**"), or similar regulations. If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible via the Products and Services, please notify our copyright agent as set forth in the DMCA, or applicable regulation. For your complaint to be valid under the DMCA, it must contain all the elements provided in 17 USC §512(c)(3) and be submitted to the following DMCA Agent: DMCA Notice, General Counsel, Blackboard Inc., 11720 Plaza America Dr., 11th Floor, Reston, Virginia 20190, Email: GeneralCounsel@blackboard.com, +1-202-463-4860.

5. PROTECTION OF PERSONAL INFORMATION

Both parties agree to uphold their responsibilities under Applicable Data Privacy Laws, including in the U.S., FERPA, the Protection of Pupil Rights Amendment (PPRA), and COPPA, as applicable. We agree to treat Personal Information as confidential, as described in the Data Processing Addendum ("DPA") available at <http://agreements.blackboard.com/bbinc/data-processing-addendum.aspx>. The DPA applies whenever Personal Information is Processed (as defined in the DPA) under the Agreement.

6. DATA SECURITY

We will implement commercially reasonable technical and organizational measures to ensure an appropriate level of security to protect Customer Property, including Personal Information. The security measures applied to Customer Property are described in Annex B of the DPA.

7. PROFESSIONAL SERVICES

7.1. If you purchase Professional Services, they shall be provided as described in any applicable attachment (such as a statement of work) or URL referenced in your Order Form and must be used within one (1) year of the annual Term in which they were purchased. We will assign employees and subcontractors with qualifications suitable for the Professional Services. We may replace employees and subcontractors in our sole discretion with other suitably qualified employees or subcontractors.

7.2. Security. While on Customer's premises, our employees and subcontractors will comply with all reasonable security practices prescribed by Customer to the extent that we have been notified in advance of such practices in writing. To the extent any employee or subcontractor is required to sign any waivers, releases or other documents as part of these security practices the terms thereof shall be invalid and have no effect against Blackboard, its employees or subcontractors.

8. FEES AND TAXES

8.1. Fees. In consideration for our performance under the Agreement, you agree to pay all fees required by the Order Form. We expressly reserve the right to change the fees payable under any Order Form with respect to any renewal of Products or Services by providing you with 30 days' advance notice of such change prior to the expiration of the then-current term or your right to decline to renew, whichever is earlier.

8.2. Excess Use Fees. Your use of the Products and Services is restricted to the use limitations set forth in the applicable Order Form or in the applicable support terms of the Agreement, and as further defined under each of the respective product terms below. Use in excess of these limitations is subject to additional fees and may be invoiced monthly by Blackboard. Any failure by Blackboard to timely invoice for any overages due under this paragraph shall not constitute a waiver of your obligation to pay such fees.

8.3. Late Fees. Interest may be charged on any overdue amounts at the lower of: (a) the highest permissible rate, or (b) 18% per annum, charged at 1.5% per month from the date on which such amount fell due until the date of payment, whether before or after judgment. You acknowledge that any delay in payment may result in termination or interruption of the provision of the Products and Services at our sole discretion.

8.4. Taxes. Unless expressly provided in an Order Form, the fees hereunder do not include any sales, use, excise, import or export, value-added ("VAT"), goods and services ("GST"), or similar tax or interest, or any costs associated with the collection or withholding thereof, or any government permit fees, license fees or customs or similar fees ("Taxes") levied on the delivery of any Products and Services by us to you. You shall be responsible for payment of all Taxes associated with your purchases hereunder. If we have the legal obligation to pay or collect Taxes, you will be invoiced an additional amount in respect of the Taxes and you will pay within thirty (30) days after the date of the invoice unless you have provided a valid tax exemption certificate authorized by the appropriate taxing authority. If you are required by Law to withhold any amounts, then you shall timely pay the amount to the relevant tax authority and provide acceptable documentation evidencing your payment. We will be responsible for taxes based on our net income or taxes (such as payroll taxes) due from us on behalf of our employees.

8.5. Purchase Orders. You agree that if your internal procedures require that a purchase order be issued as a prerequisite to payment of any amounts due, you will timely issue such purchase order (the terms of which shall not control) and inform us of the number and amount thereof. You agree that the absence of a purchase order, other ordering document or administrative procedure may not be raised as a defense to avoid or impair the performance of any of your obligations under the Agreement, including payment of amounts owed under the applicable Order Form. Blackboard reserves the right to invoice for the value of the annual fees for any subsequent renewal period, even in the absence of an issued purchase order, where use of the Products and Services continue beyond the then-contracted term.

9. TERM AND TERMINATION.

9.1. Term. The term ("Term") is defined in the applicable Order Form referencing the Agreement.

9.2. Termination for Breach. If either party materially breaches any obligation under the Agreement, the non-breaching party may terminate the Agreement in its entirety, or, at the non-breaching party's option, it may terminate solely the relevant Product or Service pursuant to which such breach relates, provided in either case that such breach has not been corrected within thirty (30) days after receipt of a written notice of such breach. Notwithstanding the foregoing, Blackboard may terminate the Agreement immediately upon written notice to you if you materially breach the provisions of the license usage restrictions set forth in the Agreement. Except for termination rights in this section, the parties have no other right of early termination.

9.3. Effect of Termination. Upon termination of the Agreement or termination or expiration of any individual license, you and your Authorized Users will immediately cease access to the applicable Products and Services, and, unless such termination is due to Blackboard's uncured material breach, you will immediately pay us all amounts due and payable for such Products and Services. Upon termination or expiration, unless expressly stated otherwise herein, each party shall

promptly cease any use of and permanently delete, or upon the other parties' request, return the other party's Confidential Information and any copies to the extent commercially reasonable.

9.4. Reserved Rights. Without limiting the foregoing, we reserve the right to allocate, limit or delay delivery of, or suspend access to our Products and Services, in whole or in part, where necessary or commercially appropriate, upon the occurrence of any situation or event (including without limitation, a Force Majeure Event (as defined in Section 14.7 below) whereby the performance or operation of our Products or Services becomes overburdened, impaired, impracticable, or their economic viability is otherwise affected.

9.5. Survival. The termination or expiration of the Agreement shall not relieve either party of any obligation or liability, nor impair the exercise of rights, accrued hereunder prior to such termination or expiration. Without limiting the foregoing, the provisions of Sections 4, 5, 8, 9.3, 9.4, 9.5, 10.4, 11, 12, 13, 17.5, 22.7, and 24.2 shall survive the termination of the Agreement for any reason.

10. GENERAL WARRANTIES.

10.1. By Blackboard. We warrant that (a) the Software or SaaS Services licensed to you will not contain any Software Errors (as defined below) for one year from delivery of the Software or for the term of the SaaS Services, respectively; (b) we will perform Professional Services and Hosting Services in a professional manner in accordance with industry standards; and (c) we will comply with all Laws which govern the performance of our obligations hereunder. For any breach of a warranty above which you promptly notify us of in writing, we will exert commercially reasonable efforts to repair or otherwise remedy the non-conformity so that the warranty is materially complied with. With regard to breaches of subsections (a) or (b) above, our remedy may include a code fix, a work around, or other modification. If we are unable to remedy the non-conformity after a reasonable period of time, then YOUR SOLE AND EXCLUSIVE REMEDY shall be: (i) for Professional Services or Hosting Services, to seek a refund of the fees paid for the un-remedied services; and (ii) for licensed Software or SaaS Services, to seek recovery of direct damages caused by the breach, subject to the limitation of liability below. These warranties by us shall not apply if you materially breach the Agreement. **"Software Error"** means a failure of any Software or SaaS Services to materially conform to its applicable standard end user documentation provided by us (**"Documentation"**), provided that such failure can be reproduced and verified by us using the most recent version (including all available updates, application packs, and releases) of such Software or SaaS Service made available to you, and further provided that Software Errors do not include any nonconformity to applicable Documentation caused by your material breach of the Agreement, or your unauthorized modification or misuse of the Software or SaaS Services.

10.2. Australian Consumer Law. To the extent you are located in Australia: The supply of the Products or Services under this Agreement may be subject to the Australian Consumer Law, Schedule 2 of the Australian Competition and Consumer Act 2010 (Cth) ("Australian Consumer Law"). Where this is the case, the following statement applies in respect of any failure to comply with the consumer guarantees under the Australian Consumer Law: Our Products and Services come with guarantees that cannot be excluded under the Australian Consumer Law. Where the Australian Consumer Laws apply, you are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage, subject to the limitation of liability below. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

10.3. By Customer. You warrant that: (a) you own or have sufficient rights in and to the Customer Property in order for you and your Authorized Users to use, and permit use of, the Products and Services, including the representations and warranties made above in connection with Proprietary Rights and Personal Information, (b) you will comply with all Laws related to your use of our Products and Services; and (c) the person executing the Agreement or any Order Form has authority to accept such Order Form and the Agreement on behalf of the Customer. The person signing specifically has the authority to commit to the payment of fees for excess usage and excess storage, calculated in accordance with this agreement and any relevant order form.

10.4. Disclaimer of Other Warranties. EXCEPT FOR WARRANTIES EXPRESSLY MADE HEREIN, THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE AND OUR LICENSORS MAKE NO WARRANTIES OR REPRESENTATIONS EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

11. MUTUAL LIMITATIONS OF LIABILITY.

11.1. Consequential Damages Limitation. EXCEPT AS EXPRESSLY PROHIBITED BY LAW AND OTHER THAN WITH RESPECT TO A BREACH OF YOUR LICENSE OR CONTENT RESTRICTIONS, AND YOUR INDEMNITY OBLIGATIONS IN SECTION 12.3, AND OUR INDEMNITY OBLIGATIONS IN SECTION 12.1, IN NO EVENT WILL EITHER PARTY OR SUCH PARTY'S LICENSORS' BE LIABLE, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY, FOR: (A) ANY LOSS OF BUSINESS, CONTRACTS, PROFITS, ANTICIPATED SAVINGS, GOODWILL OR REVENUE; (B) ANY LOSS OR CORRUPTION OF DATA, OR (C) ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES).

11.2. Mutual Limitations of Liability. EXCEPT AS EXPRESSLY PROHIBITED BY LAW AND OTHER THAN WITH RESPECT TO A BREACH OF YOUR LICENSE OR CONTENT RESTRICTIONS, YOUR INDEMNITY OBLIGATIONS IN SECTION 12.3, AND YOUR PAYMENT OBLIGATIONS, AND OUR INDEMNITY OBLIGATIONS IN SECTION 12.1, IN NO EVENT SHALL EITHER PARTY'S OR SUCH PARTY'S LICENSORS' CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO THE AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE AFFECTED PRODUCTS AND SERVICES DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE FIRST CLAIM ASSERTED HEREUNDER. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY

WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THE AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE OR HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

11.3. Essential Basis. The Parties agree that the warranty disclaimers, liability exclusions, indemnities, fees and limitations of the Agreement form an essential basis of the Agreement.

11.4. Australia Consumer Law. To the extent you are located in Australia: THE LIMITATIONS AND EXCLUSIONS IN SECTION 12 APPLY ONLY TO THE FULLEST EXTENT PERMITTED BY LAW AND NOTHING IN THIS AGREEMENT EXCLUDES, RESTRICTS OR MODIFIES ANY CONSUMER GUARANTEE, RIGHT OR REMEDY CONFERRED ON A PARTY BY THE AUSTRALIAN CONSUMER LAW OR ANY OTHER APPLICABLE LAW THAT CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED BY AGREEMENT. TO THE FULLEST EXTENT PERMITTED BY LAW, OUR LIABILITY FOR ANY BREACH OF A NON-EXCLUDABLE GUARANTEE REFERRED TO ABOVE IS LIMITED, AT THE OUR OPTION, TO: (I) IN THE CASE OF GOODS, ANY ONE OR MORE OF THE FOLLOWING: (1) THE REPLACEMENT OF THE GOODS OR THE SUPPLY OR EQUIVALENT GOODS; (2) THE REPAIR OF THE GOODS; (3) THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; OR (4) THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; OR (II) IN THE CASE OF SERVICES: (1) THE SUPPLYING OF THE APPLICABLE SERVICES AGAIN; OR (2) THE PAYMENT OF THE COST OF HAVING THE APPLICABLE SERVICES PERFORMED AGAIN.

12. INDEMNITIES.

12.1. Our Indemnity Obligations. If a third party brings a claim, suit, or proceeding against you, your affiliates, or your respective employees, contractors, agents, or assigns (a "**Customer Indemnitee**") resulting from our gross negligence or willful misconduct, or alleging that any Products and Services infringe a U.S. or European patent or a copyright under Law of any jurisdiction in which you are using the applicable Products and Services, you must promptly notify us in writing and make no admission in relation to such claims. Provided that you have fulfilled all of the foregoing obligations, we shall at our own expense indemnify, defend, and hold harmless such Customer Indemnitee, and in the above case of alleged infringement, at our own expense and option (a) procure for you the right to use the Products and Services, (b) modify or replace the Products and Services to avoid infringement without materially decreasing the overall functionality of the Products and Services; or (c) refund the applicable fee paid for the applicable Products and Services for the current term and you shall cease using such Products and Services. We shall have the sole and exclusive authority to defend and/or settle any such claim or action and you will provide assistance as we may reasonably request, at our expense, provided that we will keep you informed of, and will consult with any independent legal advisors appointed by you at your own expense regarding the progress of such defense.

12.2. Exceptions. Where infringement of a patent is caused by the combination of the Products and Services with other hardware, software, communications equipment, or other materials not provided by us (or, in the case of a method claim, additional steps in addition to those performed by the Products and Services), we shall only be obligated to indemnify you if the Products and Services constitute a "material part of the invention" of the asserted patent claim and "not a staple article or commodity of commerce suitable for substantial non-infringing use" as those phrases are used in 35 U.S.C. § 271(c).

12.3. Your Indemnity Obligations. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, if a third party brings a claim, suit, or proceeding against us, our affiliates, or our respective employees, contractors, agents, or assigns (a "**Blackboard Indemnitee**") resulting from (a) any use of the Products and Services beyond the scope of the license restrictions set forth in the Agreement, (b) the Customer Property or any other content submitted via your account, (c) your violation of any Law, gross negligence, or willful misconduct; or (d) any modifications or customization of the Products and Services by any person other than us or a third party authorized by us, you shall at your own expense indemnify, defend, and hold harmless such Blackboard Indemnitee. Blackboard shall have no liability (including indemnification obligations) to you for any claim to the extent arising out of (a) – (d) above.

12.4. Exclusive Remedy. EXCEPT FOR ANY OTHER INDEMNIFICATION OBLIGATIONS PROVIDED IN THE AGREEMENT, THE FOREGOING PROVISIONS OF THIS SECTION STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF EACH PARTY, AND THE EXCLUSIVE REMEDY OF EACH PARTY, WITH RESPECT TO CLAIMS BY ANY THIRD PARTY.

13. CONFIDENTIALITY.

13.1. Confidential Information. "**Confidential Information**" means any non-public information disclosed by either party to the other that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential, including without limitation, the terms of the Agreement, account and login credentials, information about a party's business, operations, vendors or customers, and all Blackboard Property and all Customer Property.

13.2. Nondisclosure and Nonuse. Each party shall treat Confidential Information as strictly confidential and use the same care a reasonable person would under similar circumstances. The parties agree not to use such Confidential Information except for the purposes set forth in the Agreement and shall disclose such Confidential Information only to those directors, officers, employees and agents of such party (a) whose duties justify their need to know such information, and (b) who have been informed of their obligation to maintain the confidential status of such Confidential Information. The receiving party will promptly notify the disclosing party if the receiving party learns of any unauthorized possession, use or disclosure of the Confidential Information and will provide such cooperation as the disclosing party may reasonably request, at the disclosing party's expense, in any litigation against any third parties to protect the disclosing party's rights with respect to the Confidential Information.

13.3. Exceptions to Confidential Treatment. Confidential Information shall not include information that: (a) is publicly available at the time disclosed, (b) is or becomes publicly available through no fault of the receiving party, or its employees, contractors or agents, (c) is rightfully communicated to the receiving party by persons not bound by confidentiality obligations, (d) is already in the receiving party's possession free of any confidentiality obligations at the time of disclosure, or (e) is independently developed by the receiving party. The receiving party may disclose Confidential Information to the limited extent necessary: (a) to comply with Law or the order of a court of competent jurisdiction or other governmental body having authority over such party, provided that the party making the disclosure will first have given notice to the other party, unless the party is prohibited by Law or such court or body from providing such notification, or (b) to make such court filings as may be required to establish a party's rights under the Agreement.

14. MISCELLANEOUS MATTERS.

14.1. Severability. If a court holds any provision of the Agreement to be illegal, invalid or unenforceable, the rest of the Agreement will remain in effect and the Agreement will be amended to give effect to the eliminated provision to the maximum extent possible.

14.2. Conflict Resolution. If any claim arising out of or relating to the Agreement, or a breach thereof, the parties will consult with each other to reach a satisfactory solution. If they do not reach settlement within a period of thirty (30) days, then, upon notice by either party to the other, such claim will be referred to arbitration for full and final settlement by a panel of three arbitrators appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules"). All arbitration proceedings will be conducted pursuant to the ICC rules and in the English language. The cost of the arbitration will be borne equally by the Parties. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

The applicable governing Law and place of the arbitration will be as follows: a) if you acquired the applicable Product or Service in North America or South America, the governing Law is New York unless you are located in the United States and you are legally required to be bound by the state in which you are domiciled, and in such case, the governing law shall be such state and the place of arbitration is Washington, D.C.; b) if you acquired the applicable Product or Service in the European Union, the Middle East, or Africa, the governing Law is The Netherlands and the place of arbitration is Amsterdam, The Netherlands; c) if you acquired the applicable Product or Service in the UK, the governing Law is England and Wales and the place of arbitration is London, England; d) if you acquired the applicable Product or Service in Australia or New Zealand, the governing Law is South Australia and the place of arbitration is Adelaide, South Australia; and e) if you acquired the applicable Product or Service in a region not otherwise mentioned above, the governing Law is Singapore and the place of arbitration is Singapore.

14.3. Modification and Waiver. No modification or supplement to the Agreement will be effective unless set forth in writing and signed by duly authorized representatives of Blackboard and Customer. A waiver of any breach of the Agreement is not a waiver of any other breach. Any waiver must be in writing to be effective.

14.4. Assignment. Neither party shall be entitled to assign the Agreement or its rights or obligations under the Agreement, whether voluntarily or by operation of law, except with the written consent of the other party; provided, however, that either party may assign the Agreement without the consent of the other party to any affiliate, or any entity that is the successor corporation in any merger or consolidation of either party, or any entity that purchases a majority of the voting securities of either party, or all or substantially all of the assets of either party, or of a specific division or group of such party. The Agreement shall bind each party and its successors and permitted assigns.

14.5. Notices. Any notice or communication permitted or required hereunder shall be in writing and shall be delivered in person or by courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, and, in the case of notices to us, sent to Blackboard Inc., Attn: General Counsel, 11720 Plaza America Dr., 11th Floor, Reston, Virginia 20190 or to such other address as shall be given in accordance with this section with a copy to GeneralCounsel@blackboard.com, and, in the case of you, to the address listed on your invoice, and shall in each case be effective upon receipt. **Due to ongoing disruptions of the COVID-19 Pandemic, Blackboard reserves the right to provide email Notice, with electronic delivery confirmation, to the current principal Customer contact. Actual receipt constitutes effective Notice as of the time of receipt.**

14.6. Export Control. You shall not export or allow the export or re-export the Products and Services, any components thereof or any Confidential Information of ours without our express, prior, written consent and except in compliance with all export Laws and regulations of the U.S. Department of Commerce and all other U.S. agencies and authorities, and, if applicable, relevant foreign Laws and regulations.

14.7. Force Majeure. Notwithstanding anything to the contrary in the Agreement, neither party will be responsible for any failure to fulfill its obligations, in whole or in part, due to causes beyond its reasonable control ("Force Majeure Event"), including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, internet or other telecommunication delays, fires, floods, labor disturbances or work stoppages, riots, wars, or hostilities, terrorist acts, epidemics, pandemics, a substantial change in market conditions, or other global or local health emergencies, Center for Disease Control advisories or inability to obtain any export or import license or other authorization of any government authority. We reserve the right to reasonably charge for any and all excessive usage and or usage beyond reasonable historical norms (yours or similarly situated clients not experiencing a Force Majeure Event or similar) and to the extent this is in excess of our actual costs we will give you notice.

14.8. Relationship. Blackboard and Customer are independent contracting parties. The Agreement shall not constitute the Parties as principal and agent, partners, joint venturers, or employer and employee.

14.9. Entire Agreement. The Agreement, including any Order Forms, constitutes the entire, full and complete agreement between the parties concerning the subject matter of the Agreement and supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties, and the Agreement prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the Parties relating to its subject matter. If a conflict arises between the terms of this Master Agreement and the provisions of the Order Form, Services Guide, or statement of work, the terms of this Master Agreement will govern unless an Order Form expressly provides otherwise. No term or provision set forth or cross-referenced in any purchase order or payment documentation will be construed to amend, add to, or supersede any provision of the Agreement.

14.10. Audit. Upon reasonable notice, we shall have the right to audit, at our expense, your use of the Products and Services not more than once per calendar year solely to ensure past and ongoing compliance with the Agreement.

Terms Applicable to Specific Products and Services

In addition to the terms and conditions above, the following terms and conditions apply only to the extent that you purchase the below-referenced Products and Services as specified in an Order Form.

15. BLACKBOARD LEARN™

15.1. Grant of License and Test Copies for Self-Hosted Software. Subject to your obligations under the Agreement, Blackboard grants you a non-exclusive, non-transferable, non-sublicenseable license to install and use one (1) production copy and one (1) Test Copy (as defined below) of the Software for one installation at Customer's Designated Server Site (as defined below) solely in the form of machine-readable, executable, object code or bytecode, as applicable, and solely in connection with providing access to Customer Property, including content, to your Authorized Users and to use the Documentation in support of your authorized use of the Software. You agree not to install or use any Software on any computer, network, system or equipment other than on a Designated Configuration at the physical location where the Software will be installed, as identified in the Order Form (the "**Designated Server Site**"), except with our prior written consent. The Software may access, use or integrate Java Software. Such Java Software is licensed to you under the terms of Oracle's Standard Binary Code License Agreement currently found at: <http://www.oracle.com/technetwork/java/javase/terms/license/index.html>.

15.2. Test Copies of Software or SaaS Services. Self-hosted Software and SaaS Services licensees are provided one (1) Test Copy of the Software or SaaS Services. If you purchase the Blackboard Managed Hosting Non-Production Test Environment, we will host the Test Copy of the Software for you. A "**Test Copy**" is a copy of the Software or a sandbox environment for the SaaS Services used solely for non-production testing purposes and is not supported or warranted.

15.3. Grant of Learn API License. We grant you a limited, non-exclusive, revocable, non-sublicensable, non-transferable license to access our public Learn-related API's ("Learn API"). The Learn API(s) are provided in the form of one of the following: a Building Block API, a REST API or a web service, that enables a "connection" into our servers. We will provide you with the information necessary to enable your use of the Learn API(s). You may not use or install the Learn API(s) for any other purpose without our written consent, and may not copy, rent, adapt, disassemble, lease, assign, sublicense, reverse engineer, modify or decompile, the Learn API(s) or any part thereof. We reserve the right to limit the number and/or frequency of API requests or take other actions necessary to protect the integrity of our Services.

15.4. Use Limitations. Your usage is limited by the number of Authorized Users, FTE, Bandwidth and Storage set forth in the Order Form or the support terms of the Agreement. An "Authorized User" (or User or Active User) means any individual user of the platform, including but not limited to, students, teachers, parents of students, or employees of yours (including invited third-parties thereof) authorized to use the platform per the terms of this Agreement. Your usage in terms of the number of Authorized Users is determined by first taking the sum of unique authenticated users on a monthly basis (the "Monthly Active Users"). For each annual contract period, the Authorized Users is equal to the average of the Monthly Active Users. This calculated average is then compared to the Authorized Users limitation set forth in the Order Form or support terms of the Agreement. "FTE" means the number of full-time students plus half of the part-time students enrolled at your institution. "Storage" means the highest amount of storage utilization during the respective annual term of a client's uploaded and hosted files, including but not limited to content files, media files and recordings, typically measured in gigabytes (GB) or terabytes (TB). Storage is only sold in 1 TB allotments. By way of example only, if you are contracted for 1TB of storage, and your storage reaches 2TB in month two of your contract, you will be charged for 2TB of storage for that annual term of the contract. Additional Authorized Users, FTE, or Storage used in excess of the limitations set forth in the Order Form or support terms of the Agreement is subject to additional fees and purchase. Authorized Users, FTE, or Storage below the limitations set forth in the Order Form or support terms of the Agreement, if any, are not eligible for rollover or carryover to subsequent Terms, or refund. Blackboard reserves the right to charge for overages as they occur throughout the term, provided however, any failure by Blackboard to timely invoice for any overages shall not constitute a waiver of your obligation to pay such fee.

15.5. Your Operations. For clarity, if your primary operations involve in-classroom instruction in a physical location, the SaaS Services or Hosting Services you purchase pursuant to your Order Form will be designed to augment in-classroom instruction in a physical location. If, on the other hand, your primary operations involve virtual instruction via the Internet, the SaaS Services or Hosting Services you purchase will be designed to support those fully virtual operations rather than in-classroom instruction in a physical place. If, during the Term, your primary mode of operations changes from in-classroom instruction in a physical location to fully virtual instruction via the Internet, or vice-versa, you must notify Blackboard immediately as your license will not support such a transition in operations, and you will need to purchase the SaaS Services or Hosting Services applicable to your new operations.

16. BLACKBOARD COLLABORATE

16.1. Use Limitations. Your usage is limited by the number of Authorized Users, Minutes, FTE, and Storage set forth in the Order Form or support terms of the Agreement. An "Authorized User" (or User or Active User) means any individual user of the platform, including but not limited to, students, teachers, parents of students, or employees of yours (including invited third-parties thereof) authorized to use the platform per the terms of this Agreement. Your usage in terms of the number of Authorized Users is determined by first taking the sum of unique authenticated users (via an LMS integration or authenticated into Collaborate via an invitation link) plus the peak of unauthenticated (guest) users on a monthly basis (the "Monthly Users"). For each annual contract period, the Authorized Users is equal to the average of the Monthly Users. This calculated average is then compared to the Authorized Users set forth in the Order Form or support terms of the Agreement. A "Minute" means each sixty-second interval in which an Authorized User is attending a session, event or playing back a recording of a session or event. For purposes of illustration only, 5 people in a 30-minute Collaborate session = 150 minutes; and if 3 of those 5 people watched the full 30-minute recording, you would incur an additional 90 minutes; for a total of 240 minutes total. "FTE" means the number of full-time students plus half of the part-time students enrolled at your institution. Minutes are sold in increments of 1 million minutes. "Storage" means the highest amount of storage utilization during the respective annual term of a client's uploaded and hosted files, including but not limited to content files, media files and recordings, typically measured in gigabytes (GB) or terabytes (TB). By way of example only, if you are contracted for 1TB of storage, and your storage reaches 2TB in month two of your contract, you will be charged for 2TB of storage for that annual term of the contract. Storage is only sold in 1 TB allotments. Additional Authorized Users, Minutes, FTE, or Storage used in excess of the limitations set forth in the Order Form or support terms of the Agreement is subject to additional fees and purchase. Authorized Users, FTE, or unused Minutes or Storage below the limitations set forth in the Order Form or support terms of the Agreement, if any, are not eligible for rollover or carryover to subsequent Terms, or refund. Blackboard reserves the right to charge for overages as they occur throughout the term, provided however, any failure by Blackboard to timely invoice for any overages shall not constitute a waiver of your obligation to pay such fees.

16.2. Your Operations. For clarity, if your primary operations involve in-classroom instruction in a physical location, the SaaS Services or Hosting Services you purchase pursuant to your Order Form will be designed to augment in-classroom instruction in a physical location. If, on the other hand, your primary operations involve virtual instruction via the Internet, the SaaS Services or Hosting Services you purchase will be designed to support those fully virtual operations rather than in-classroom instruction in a physical place. If, during the Term, your primary mode of operations changes from in-classroom instruction in a physical location to fully virtual instruction via the Internet, or vice-versa, you must notify Blackboard immediately as your license will not support such a transition in operations, and you will need to purchase the SaaS Services or Hosting Services applicable to your new operations.

17. BLACKBOARD CONNECT; MASS NOTIFICATION SERVICES

17.1. Authorized Users; Recipients. Your Authorized Users are your employees. You will only use the Product and Service to send messages to the number and type of Recipient(s) specified in the Order Form, and to the extent not so specified, as defined below. You will provide all contact data for Recipients (the "**Recipient Data**"). You represent, warrant and covenant that you will not use the Product and Service for the purpose of sending commercial messages, including, without limitation, offers to purchase, sell, barter or lease commercial products, goods, or services. Unless otherwise indicated on an Order Form, telephone messages may only be sent to telephone numbers from the North American Numbering Plan from the 48 contiguous United States, Alaska and Hawaii, and Canada. Additional charges incurred by the Recipient for messages, including but not limited to text message fees or data fees, shall be payable by you or Recipient. Unless otherwise specified on the Order Form, a "**Recipient**" shall be the following with respect to each type of customer entity listed:

- **K-12 Institution:** Parents of enrolled students, administrators, students, faculty, staff, and board members of the institution.
- **Higher Education Institution:** Enrolled students, faculty, and staff of the institution.
- **Government:** Households, businesses, and other related individuals within the government entity's jurisdiction.
- **Corporate:** Employees, consultants, contractors, and board members of the corporation.

17.2. Connect with Teacher. Blackboard Connect with Teacher will enable your teachers to send pre-recorded telephone comments to parents of students in a designated language. We will provide support to a designated administrator ("**Teacher Champion**") at your institution or entity. The Teacher Champion will in turn support the teachers using the Blackboard Connect with Teacher Product and Service.

17.3. Web Portal. If you elect to link to and use the web interface provided by us (the "**Web Portal**"), you agree that the Web Portal is for the sole purpose of enabling Recipients to update and add their contact information. If you elect to use the Web Portal, we grant for the period of the Term (as defined below) to you a limited non-exclusive, worldwide, royalty-free license to place a digital image of the applicable sign-up Logo, which will be presented to you (the "**Image**"), on an appropriate page of your Internet site, with a hyperlink to our Web Portal site (the "**Link**") currently at <https://portal.blackboardconnected.com/>. You may not use any other trademark or service mark in connection with the Image without our prior written approval. The Link may not be used in any manner to provide an Authorized User with access to the Web Portal via any framing, layering or other techniques now known or hereafter developed that permit display of the Web Portal with any materials posted by you or anyone other than us. You may not allow the Image to be linked to any other web site. You may not use the Image in any manner not permitted hereunder, modify the Image, or copy, or create a derivative work from, the "look and feel" of the Image. We will have the right to review all uses of the Image for quality control purposes and proper compliance. We reserve the right to modify permission to use the Image and/or the Link at any time.

17.4. Weather Alerts. If you are licensing our weather alerts Service, you agree that we are delivering weather information created and provided by a third-party public service, and not by us. Weather forecasting is an inexact science. We shall have no responsibility or liability whatsoever to you or any other person or entity, parties and non-parties alike, for any inconsistency, inaccuracy, or omission for weather or events predicted or depicted, reported, occurring or occurred. **IN NO EVENT WILL WE BE RESPONSIBLE FOR ACTIONS OR LACK OF ACTION TAKEN TO PRESERVE LIFE OR PROPERTY.**

17.5. Representations, Obligations, and Indemnity. You represent and warrant that: (a) you will comply with all Laws and contracts in connection with use of Recipient Data, the Product and Service, and with respect to the content and transmission of calls, texts, and other messages ("**Messages**") sent using the Product and Service, including, without limitation, all federal and state telemarketing-related laws, rules and regulations, the Telephone Consumer Protection Act (47 U.S.C. § 227) the FCC's implementing regulations (47 C.F.R. § 64.1200) (such laws, rules and regulations, as amended from time-to-time, collectively, the "**Telemarketing Laws**"), and where applicable, the legislation commonly referred to as Canada's Anti-Spam Legislation (S.C. 2010, c. 23) ("**CASL**"); (b) as to each Recipient to be contacted by us on your behalf, you have obtained consents that may be required by the Telemarketing Laws, CASL and your privacy policies; (c) you will retain documentary proof of such consents for at least five (5) years from the date the Recipient's contact information is provided by you to us; (d) you will suppress and will not provide to us contact information for any Recipient who has registered his or her telephone number on the national Do-Not-Call Registry, any similar state registries or has otherwise indicated that he or she does not wish to be contacted by you or us; (e) you will have in place reasonable safety and emergency response procedures in the event of an emergency (including without limitation, notifying 911 or equivalent, fire, police, emergency medical, and public health, collectively, "**First Responder Services**") which do not utilize the Product and Service; (f) you will not take actions that will subject Blackboard to any Laws due to the import of Recipient Data; (g) you will provide a reasonable means for Recipients to rescind consent to receive Messages and will not send Messages to Recipients who have opted out of receiving Messages from you; (h) if you purchase data from us, you will only use such data purchased from us to contact individuals pursuant to the use of the Product and Service and are prohibited from downloading or making copies of such data purchased from us if such activity would violate a Law or contract; and (i) where you are providing a Recipient count or other data for the purposes of our Product and Service pricing quotations, such information shall be true and correct. You will designate qualified personnel to act as liaisons between you and us respecting technical, administrative and content matters, and providing accurate and current contact information. We shall have the right to require you to provide a legal compliance plan in connection with your use of our mass notification services, and audit your compliance with such plan as well as with subsections (a), (b), (c), (d), and (g) above. Failure to comply with any provision of this Section 17.5 is a material breach of the Agreement. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, you agree to indemnify, defend and hold us harmless from and against all claims, lawsuits, proceedings, causes of action, damages, liabilities, losses, judgments, fines, penalties, costs, and expenses (including attorneys' fees) relating to or arising out of your breach of the foregoing representations and warranties, or in connection with any claim or action from a third party that arises from the sending (or inability to send or receive), content, or effects of any Messages you distribute using, or your failure to use, the Product and Service. In connection with such indemnity and defense obligations related to a third party claim, lawsuit, etc., (i) we may participate therein (but not control) through counsel of our own choosing, which participation shall be at our sole expense, and (ii) you shall not settle or permit the settlement of any such third party claim, lawsuit, etc. without our prior written consent, which consent shall not be unreasonably withheld. This Section shall survive any termination of the Agreement.

17.6. Emergency & Outreach Messaging. If you are purchasing Messaging restricted by use-case, the following definitions shall apply. An "**Emergency**" is a serious and unexpected incident, situation, or natural phenomenon that may require action but is not immediately threatening to life, health, property or the environment or has a high probability of escalating to cause immediate danger to life, health, property or environment. An "**Emergency Message**" is a Message sent to all Recipients in connection with an Emergency. An "**Outreach Message**" is a Message sent to one or more Recipients for general outreach and informational purposes that is not an Emergency Message.

17.7. Remedies and Disclaimers. Due to the nature of mass notification services, in the event of the Product and Service's failure to comply with the Agreement, your sole and exclusive remedy shall be to terminate the Service. You agree that the Product and Service is not intended, nor designed, for use in high-risk activities, or in any situation where failure of the Product and Service could lead to death, personal injury, or damage to property, or where other damages could result if an error or outage occurred. The parties further agree that, **NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THE AGREEMENT, to the extent not prohibited by Law, WE SHALL NOT BE LIABLE FOR ANY DEATH, PERSONAL INJURY, OR DAMAGES ARISING OUT OF OR RELATED TO USE OF THE PRODUCT AND SERVICE.** You agree that your primary recourse in the event of any actual or potential threat to person or property should be to contact First Responder Services and that the Product and Service is not intended to replace such First Responder Services, or to be used for communicating with, or replace notification to, or interoperate directly with, such First Responder Services, which should have already been notified and deployed prior to using the Product and Service.

17.8. Training and Testing. Blackboard makes training on the Product and Service available to you, and recommendations for periodic testing of the configurations and operations of the Product and Service for Customer. You acknowledge that taking advantage of such training on a reasonable basis for appropriate personnel and performing such testing is your responsibility, and that failure to do so could result in the Product and Service not functioning as expected.

17.9. Marketing and Political Activities. The applicable Products and Services shall not be used for marketing or political activities.

17.10. Excessive Usage. During times of prolonged, excessive usage of the Products and Services, we reserve the right to charge you additional fees not exceeding our estimated incremental costs, including applicable fees and taxes, for such Excess Usage. The term "**Excess Usage**" shall mean the amount of SMS texting segments and/or phone voice minutes per FTE initiated through the Connect and/or Mass Notification services during a calendar month over 20 such segments or minutes per FTE in any two or more consecutive calendar months above such level. We shall use best commercial efforts to notify you through our client portal, our representatives, and/or via email prior to assessing any such additional charges, which shall not exceed \$.0065 per segment or minute. Unless otherwise specified in the Order Form, "**FTE**" is defined as the number of full-time students plus half of the part-time students enrolled at your institution. Blackboard reserves the right to charge for overages as they occur throughout the term, provided however, any failure by Blackboard to timely invoice for any overages shall not constitute a waiver of your obligation to pay such fees.

18. SOCIABILITY & SOCIAL MEDIA MANAGEMENT PRODUCTS

Third-Party Services. You acknowledge that the Products and Services may assist you to access or themselves automatically access, interact with, and/or purchase services from third parties via third-party social media and similar websites or applications (collectively, the "Third-Party Services"). You authorize any such access. Any use of Third-Party Services is governed solely by the terms and conditions of such Third-Party Services (and you shall comply with all such terms and conditions), and any contract entered into, services provided, or any transaction completed via any Third-Party Services, is between you and the relevant third party, and not Blackboard. Blackboard makes no representation and shall have no liability or obligation whatsoever in relation to the content provided to or available at, use of, or correspondence with, any such Third-Party Services or any transactions completed and any contract entered into by you with any such third party.

19. SCHOOLWIRES, EDLINE & WEBSITE COMMUNITY MANAGEMENT PRODUCTS

19.1. License Grant. You shall have a right to use those website community management SaaS Services purchased under an Order Form. Certain SaaS Services may include use of a website or other web-based learning environment which is hosted by us (a "**Site**"). A Site which is built upon the designated website community management system is generally used as a client's primary internet website and additional Sites are typically used as one or more related sub-sites (such as an individual school's website or other secondary website). Where your licensing rights are limited by a specified number of Sites, such limit shall be determined by adding up all of your Sites, including both those that are used as primary websites and those used as secondary websites. In this regard, as used in the Order Form to establish licensing limitations, the following definitions shall apply:

"Channels." A group of one or more closely related FlexSites located within a Site. For example, an "Athletics" Channel may contain FlexSites for various teams such as Varsity Football, Varsity Soccer and Varsity Baseball.

"FlexSites." (Also referred to at times as "**Sections**"). A connected group of web pages devoted to a single topic or several closely related topics located within a Channel. For example, FlexSites can be used to provide online content for an individual class, club, athletic team and/or district policies. A client's rights of use in the SaaS Services are generally limited by a specified number of FlexSites as specified in the Agreement.

19.2. Usage Limitations. Depending on the website community management SaaS Services purchased, your use of the SaaS Services may be limited by bandwidth, storage or other limitations. Blackboard reserves the right to charge for overages as they occur throughout the term, provided however, any failure by Blackboard to timely invoice for any overages shall not constitute a waiver of your obligation to pay such fees.

19.2.1. Authorized Users. Authorized Users of the website community management SaaS Services may only be comprised of students, teachers, administrators, parents, staff and community constituents directly enrolled or otherwise affiliated with your district or institution who you authorize to access and use the SaaS Services in support of your educational operations. However, where you have purchased rights of use in a Site which is designed to display public-facing content, third party visitors may access the screen displays on the Site on a remote, web-enabled basis in order to view the Site content which you have chosen to display to the public.

19.2.2. Purposes. You may only use the website community management SaaS Services in accordance with the uses contemplated in the pertinent Documentation.

19.2.3. Authorized User accounts. If you purchase rights of use in website community management SaaS Services which are designed to enable collaborative learning and social networking within a school district, your right to use these SaaS Services shall be limited by a specified number of Authorized User accounts. The "Authorized User account" limitation shall be specified in the applicable Order form and you shall not be permitted to allow use of the SaaS Services to anyone other than those individual account holders who are specified by name on a list maintained by you, where the total account holders shall not exceed the specified limitation.

19.2.4. Participants and Classrooms. If you purchase rights of use in website community management SaaS Services which facilitate a virtual international classroom exchange program, then your rights of use will be limited to a number of classrooms and associated participants as specified in the applicable Order Form.

19.2.5. Passkey Manager. If your license includes rights of use in the Passkey Manager, then our obligations to provide Support therefor shall extend only to the pre-built single sign-on configurations in the forms delivered by us as part of the general release version of this Service. We have no obligation

to support the Passkey Manager if any third party changes their methodology or technology for authenticating their application or website resulting in a disruption of the pre-built configurations provided by us.

19.3. Monitoring the Site. You acknowledge that persons other than our employees, particularly students, may post inappropriate material on, or otherwise interfere with (e.g., by “hacking”), the Site. It may be difficult to determine precisely who took such actions or when they were taken. However, you agree that you are solely responsible and liable for monitoring the Site on a regular basis to ensure that it does not contain inappropriate material and is functioning properly. In the event that you discover any materials that should be removed from the Site, you will do so promptly or, if you cannot do so, will notify us immediately. In no event shall we be liable in any manner or form, or under any theory or cause of action, for inappropriate content or materials posted on your Site unless we post such content or materials.

19.4. Your Responsibilities. You acknowledge and agree that your use of the website community management SaaS Services does not and will not violate any applicable laws or third party rights. You acknowledge and agree to comply with all applicable privacy laws, including without limitation FERPA, COPPA and state laws relating to student data privacy, regarding your use of the services to provide content to and collect information from your Authorized Users and visitors, including, without limitation, by posting your privacy policy on your Site and for making all required disclosures and obtaining all required consents, if necessary, from such Authorized Users and visitors with respect to your collection, use, and disclosure of personal information.

19.5. Authorized User Requirements. You shall ensure that the computing systems utilized by you and your Authorized Users meet the required browser and other configurations then specified by us (in the Order Form or on our website) as necessary for the operation of the SaaS Services and Site (other than equipment provided by us as part of our hosting obligations). We reserve the right to modify these requirements from time to time and will notify you of any material modifications by e-mail or otherwise.

19.6. Terms of Use and Privacy Policy. Where we provide access to our Terms of Use and Privacy Policy on the Site, you shall not remove, disable, impede access to or otherwise modify them.

19.7. Additional Ownership Rights. In addition to the ownership rights described in the Agreement, we shall own all right, title and interest in all website templates, the design and layout (including the “look and feel”) of the Site, the underlying architecture and framework of the Site, and other content or deliverables developed by us for the Site.

20. MOBILE APPLICATIONS

Blackboard provides software (“**Mobile Software**”) to access many of the Products and Services via a mobile device. The use of Mobile Software is governed by the terms and conditions referenced in the application store (e.g., Apple, Inc. or Google, Inc. app stores) relevant to the Mobile Software except with regard to the collection, use, and deletion of Personal Information on your behalf, which is governed by the Agreement. Blackboard makes no representation regarding the availability of third-party application stores or the Mobile Software’s compatibility with mobile devices.

21. SMARTVIEW™

21.1. Authorized Users. Your Authorized Users are your employees. You will only use the Product and Service to provide help-desk guidance (including but not limited to guidance on financial aid, student accounts, registration and records) to current faculty and staff. In addition, if specified on the applicable Order Form, your current and prospective students may access the Self-Help portal of the Product and Service.

21.2. Representations and Obligations. You represent and warrant that: (a) you will comply with all applicable Laws, including those regarding Personal Information, in connection with your use of SmartView; (b) you will not store any Personal Information within SmartView; (c) you are responsible for communicating any necessary modifications to the Product and Service that arise due to changes in your internal policies or the Law; (d) in order to facilitate a reasonable method for us to obtain timely and automated access to institutional data, upon the Effective Date, your student information system (SIS) shall be integrated with Smartview, and depending on the scope of services, your learning management system (LMS) system and customer relationship management (CRM) system, may be integrated with Smartview; and (e) following the initial configuration of the Product and Service, you are responsible for any modifications or errors within the workflow routines in the Product and Service. The costs and timelines to complete any requested modifications to the Product and Service must be addressed in a mutually agreed Statement of Work.

21.3. Remedies and Disclaimers. You acknowledge that: (a) you are solely responsible for the accuracy of Personal Information or content in the Product and Service; (b) the KnowledgeBase in SmartView is for informational purposes only and it is your responsibility to update the content in the KnowledgeBase every twelve (12) months. Blackboard will not be held to any penalties associated with missed One Stop or Help Desk Service Level Agreements during any period where the KnowledgeBase has not been updated in the past twelve (12) months; (c) your Authorized Users will not provide any financial guidance or advice solely based on the Product and Service; (d) you agree that you are responsible for the actions or inactions of your Authorized Users; and (e) Blackboard shall have no liability associated with the guidance or advice provided to Students by such Authorized Users. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, you agree to defend, indemnify and hold us harmless against any damages, losses, liabilities, settlements, and expenses (including without limitation, costs and reasonable attorneys’ fees) in connection with any claim or action that arises from the guidance or advice provided to Students using the Product and Service.

21.4. Additional Fees. In the event you do not integrate your system with Smartview as outlined in Section 22.2(d) above, Blackboard shall invoice you at the following specifications: for One Stop Services and Help Desk, you will be billed at the Premium Solution rate for the period of time that Smartview is not integrated with your systems; for Help Desk Services: (1) for per minute-based pricing models, we may charge you an additional 25% per minute; and (2) for per incident-based pricing models, we may charge you an additional 25% per incident. Blackboard reserves the right to charge for overages as they occur throughout the term, provided however, any failure by Blackboard to timely invoice for any overages shall not constitute a waiver of your obligation to pay such fees.

22. STUDENT SUPPORT SERVICES

22.1. Types and Estimates of Student Support Services. The Order Form will specify whether you have purchased inbound, live outbound, and/or automated outbound Student Support Services. The estimated number of annual Inbound Interactions, monthly Inbound Interactions, Average Handle Time, and quarterly Outbound Interactions, all as applicable and defined below, are also set forth on the Order Form. If these estimates exceed the actual parameters experienced in the relevant period, we shall be excused from any failure to meet any service levels for such period as outlined in the Statement of Work. The parties shall review the estimates at the end of any term and agree on updated estimates for any renewal term (including the payment of additional fees based on such updates) and update the Order Form accordingly.

22.1.1. Inbound Interactions. You represent that the estimated monthly Inbound Interactions is a reasonable estimate, and at the end of a term we shall be entitled to invoice you in accordance with the terms set forth herein. You acknowledge and agree that, if during any annual term, the actual number of Inbound Interactions exceeds your total Estimated Inbound Interactions ("Excess Inbound Interactions"), then at the end of the then-current annual term, we shall be entitled to charge you for all such Excess Inbound Interactions at a Per Incident Rate, plus a premium, as outlined in the Statement of Work. You may upwardly adjust estimated monthly Inbound Interactions for any future month upon delivery of 60 days' prior written notice to us.

22.1.2. Live Outbound Interactions. If the actual live Outbound Interactions exceeds the quarterly estimate by 15% or more, we will meet to determine whether the estimate for future quarters needs to be upwardly adjusted (and, if so, shall update the Order Form, accordingly, including the payment of additional fees).

22.2. Provision of Service Desk Infrastructure. We shall provide the enabling technology, software system, or other designated support procedures/processes and related third party technologies that will provide back-end ticketing, a customer-facing knowledge base and related support modules, including access to self-help resources and live support via phone, chat, and web-based submissions, where applicable ("**Service Desk Infrastructure**") to Authorized Users designated by you who will become familiar with the Service Desk Infrastructure and work with the Blackboard Service Desk on your behalf to provide the Student Support Services ("**Authorized Customer Support Users**") to students, faculty or staff members of yours located at or receiving or providing services through your institution ("**Authorized Users**").

22.3. Implementation. We shall provide an implementation project manager, implementation resources, and requisite tools to develop and implement your Student Support Services. Implementation services, development, and associated go-live dates are assumed to be standard unless otherwise specified in a custom scope. If, during implementation, it is discovered that your business processes necessitate a custom scope after contract signing, go-live dates could be impacted. We will also provide you with a customer service manager. During the implementation phase, the parties shall co-author the call script to be used by our representatives.

22.4. Availability. We shall use commercially reasonable efforts to make the Service Desk Infrastructure available. From time to time, it may be necessary for us to perform scheduled maintenance on and/or deliver upgrades to various components of the Service Desk Infrastructure, as set forth in more detail in the Order Form.

22.5. Your Responsibilities. These responsibilities are essential to our achievement of service levels for you.

22.5.1. Access. You agree to provide us with any reasonable information and training required by us to establish the Service Desk Infrastructure. You will provide reasonable access to your personnel and arrange for us to have suitable access to your facilities (including suitable office space and resources for our personnel working on-site) and systems within your control necessary to perform the Student Support Services.

22.5.2. Cooperation. You agree to assign an executive sponsor and day-to-day project manager with final sign-off authority to review and approve processes, workflow, knowledge base and escalation procedures regarding the Student Support Services. Your personnel will actively participate in review and planning meetings, trainings, and the communication of processes and documentation reasonably required to provide the Student Support Services.

22.5.3. Usage Limitations. You shall use best efforts to ensure that only Authorized Customer Support Users are provided access to the Service Desk Infrastructure and Student Support Services, including not causing or permitting third parties to access such infrastructure or services.

22.6. Authorized Users. You acknowledge that we will rely on information provided by you. You agree to provide such information that is reasonably requested by us from time to time, including (i) a comprehensive list of all current and (to the extent then known) potential Authorized Users, (ii) the email addresses and/or phone numbers of Authorized Users, (iii) student demographic information, and (iv) headcount data.

22.7. Representations and Indemnity. If you request that we contact any Authorized User or other person on your behalf ("**Recipient**"), you represent and warrant that: (a) you will comply with all Laws and contracts in connection with use of contact information for Recipients, the Student Support Services, and with respect to the content and transmission of calls, texts, and other messages ("**Messages**") sent using the Student Support Services, including, without

limitation, all federal and state telemarketing-related laws, rules and regulations, the Telephone Consumer Protection Act (47 U.S.C. § 227) and the FCC's implementing regulations (47 C.F.R. § 64.1200) (such laws, rules and regulations, as amended from time-to-time, collectively, the "**Telemarketing Laws**"); (b) as to each Recipient to be contacted by us on your behalf, you have obtained all consents that may be required by the Telemarketing Laws and your privacy policies; (c) you will retain documentary proof of such consents for at least five (5) years from the date the Recipient's contact information is provided by you to us; (d) you will suppress and will not provide to us contact information for any Recipient who has registered his or her telephone number on the national Do-Not-Call Registry, any similar state registries or has otherwise indicated that he or she does not wish to be contacted by you or us; and (e) you will provide a reasonable means for Recipients to rescind consent to receive Messages and will not request us to send Messages to Recipients who have opted out of receiving Messages from you. We shall have the right to audit your compliance with subsections (a) - (e) above. Failure to comply with any provision of this section is a material breach of the Agreement. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, you agree to indemnify, defend and hold us harmless from and against all claims, lawsuits, proceedings, causes of action, damages, liabilities, losses, judgments, fines, penalties, costs, and expenses (including attorneys' fees) relating to or arising out of your breach of the foregoing representations and warranties, or in connection with any claim or action from a third party that arises from the sending (or inability to send or receive), content, or effects of any Messages you distribute using, or your failure to use, the Product and Service. In connection with such indemnity and defense obligations related to a third-party claim, lawsuit, etc., (i) we may participate therein (but not control) through counsel of our own choosing, which participation shall be at our sole expense, and (ii) you shall not settle or permit the settlement of any such third-party claim, lawsuit, etc. without our prior written consent, which consent shall not be unreasonably withheld. This Section shall survive any termination of the Agreement.

22.8. Changes and Oral Instructions. You shall, to the extent reasonably possible, provide us with no less than 60 days' prior notice of events that you anticipate will increase volume of the Student Support Services. We may proceed with and be compensated for performing changed work for a period of up to thirty (30) calendar days if we receive an oral instruction to proceed from your project manager or another authorized representative and we send a written confirmation of the oral instruction to you.

22.9. Added Definitions.

22.9.1. "Average Handle Time" means, with respect to any period, the average time (including talk time, time on hold, and wrap-up time) taken to handle an Inbound Interaction.

22.9.2. "Inbound Interaction" means a single inbound Support Request from an Authorized User to the Service Desk or the Service Desk Infrastructure. An Inbound Interaction does not include (i) live or automated outbound Support Services or (ii) self-help by an Authorized User where there is no interaction between the Service Desk and an Authorized User.

22.9.3. "Outbound Interaction" means an outbound interaction between the Service Desk and an Authorized User (for example, during a live outbound campaign in support of enrollment or financial aid objectives). An Outbound Interaction may be either a live interaction between a Blackboard Service Desk member and an Authorized User or automated (e.g., outbound text messages). An Outbound Interaction does not include (i) inbound Student Support Services or (ii) self-help by an Authorized User where there is no interaction between the Service Desk and an Authorized User.

22.9.4. "Service Desk" means our personnel that provide Student Support Services to Authorized Users under this Section 24.

22.9.5. "Support Request" means a request for assistance received by Blackboard's Service Desk and/or Service Desk Infrastructure from an Authorized User, such as any answered phone call, answered email, or answered chat.

22.9.6. "Self-Service Incident" means students getting the information that they need using self-service technologies.

22.10. Travel. You will reimburse us for all reasonable travel expenses incurred by our employees in connection with the delivery of our services, unless stated otherwise. In the event that you choose to cancel a scheduled on-site visit within two (2) weeks of the scheduled event, Blackboard may invoice you for associated travel change fees.

22.11. Blackboard reserves the right to charge for overages as they occur throughout the term, provided however, any failure by Blackboard to timely invoice for any overages shall not constitute a waiver of your obligation to pay such fees.

23. BLACKBOARD ALLY

23.1. Grant of License. With respect to the Blackboard Ally service, for the term specified in the applicable Order Form, we grant you a non-exclusive, non-transferable, non-sublicensable, license to access and use the Blackboard Ally service made available by Blackboard.

23.2. No advice. We do not guarantee that the use of the Blackboard Ally service will ensure the accessibility of your web content or that your web content will comply with any specific web accessibility standard or law. Any information or guidance accessed through the Blackboard Ally service, including without limitation the results of any website tests conducted or other guidance with respect to compliance with various accessibility standards, including without limitation the web content accessibility guidelines 2.0 (WCAG 2.1), or laws, rules or regulations, including without limitation those commonly known as the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008, applicable sections of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, 251(a), the Rehabilitation Act, the Individuals with Disabilities Education Act, or their international counterparts, any or all as amended from time to time, or

related rules or regulations is provided solely as a courtesy and is not legal advice or counsel. Other laws may apply to you or your customers depending on the nature of their goods and services. We expressly disclaim any implied or express warranties and any liability with respect to any information or guidance provided.

24. MARKETING, ENROLLMENT, AND RECRUITMENT SERVICES

24.1. Marketing Services: Ownership of Marketing Deliverables. Marketing creative deliverables that are created or developed by Blackboard specifically for you pursuant to a Blackboard marketing services Statement of Work ("Marketing SOW"), including all marketing and media plans, and creative content such as slogans, artwork, media content, image files, videos, drawing, photographs, graphic material, film, music and web sites ("Customer Marketing Deliverables") shall be owned by you. You hereby license the Customer Marketing Deliverables to Blackboard during the Term of the Agreement solely to permit Blackboard to carry out its obligations under this Agreement and any associated Marketing SOW's. To the extent that any deliverable created under a Marketing SOW includes Blackboard intellectual property, Blackboard hereby licenses such Blackboard intellectual property to Customer for use solely as part of such deliverable. Such license shall survive expiration of the relevant Marketing SOW. Customer agrees that Blackboard shall have no obligation to host any of the deliverables under a Marketing SOW following the termination of such Marketing SOW.

24.2. Enrollment Services: Representations and Indemnity. If you request that we contact any prospective student, Authorized User, or other person on your behalf ("Recipient"), you represent and warrant that: (a) you will comply with all Laws and contracts in connection with use of contact information for Recipients, the Enrollment Services, and with respect to the content and transmission of calls, texts, and other messages ("Messages") sent, including, without limitation, all federal and state telemarketing-related laws, rules and regulations, the Telephone Consumer Protection Act (47 U.S.C. § 227) and the FCC's implementing regulations (47 C.F.R. § 64.1200) (such laws, rules and regulations, as amended from time-to-time, collectively, the "Telemarketing Laws"); (b) as to each Recipient to be contacted by us on your behalf, you have obtained all consents that may be required by the Telemarketing Laws and your privacy policies; (c) you will retain documentary proof of such consents for at least five (5) years from the date the Recipient's contact information is provided by you to us; (d) you will suppress and will not provide to us contact information for any Recipient who has registered his or her telephone number on the national Do-Not-Call Registry, any similar state registries or has otherwise indicated that he or she does not wish to be contacted by you or us; and (e) you will provide a reasonable means for Recipients to rescind consent to receive Messages and will not request us to send Messages to Recipients who have opted out of receiving Messages from you. We shall have the right to audit your compliance with subsections (a) - (e) above. Failure to comply with any provision of this section is a material breach of the Agreement. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, you agree to indemnify, defend and hold us harmless from and against all claims, lawsuits, proceedings, causes of action, damages, liabilities, losses, judgments, fines, penalties, costs, and expenses (including attorneys' fees) relating to or arising out of your breach of the foregoing representations and warranties, or in connection with any claim or action from a third party that arises from the sending (or inability to send or receive), content, or effects of any Messages you distribute using, or your failure to use, the Product and Service. In connection with such indemnity and defense obligations related to a third-party claim, lawsuit, etc., (i) we may participate therein (but not control) through counsel of our own choosing, which participation shall be at our sole expense, and (ii) you shall not settle or permit the settlement of any such third party claim, lawsuit, etc. without our prior written consent, which consent shall not be unreasonably withheld. This Section shall survive any termination of the Agreement.

25. BLACKBOARD REACH

25.1 License Grant and Use. For the term specified in the applicable Order Form, we grant you a non-exclusive, non-transferable, non-sublicenseable, license to access and use the Blackboard Reach service made available by us. The Blackboard Reach service provides your teachers and staff with the capability to initiate direct messages to household units, including students and their parents and caregivers, and allows students and their parents to respond to these messages through a two-way messaging ("**Two-Way Messaging**") functionality. In order to utilize the Two-Way Messaging functionality, Authorized Users will need to install a mobile application or navigate to a website. An internet connection is required.

25.2 Authorized Users. Unless otherwise specified on the Order Form, your Authorized Users are your employees, including administrators, faculty, and staff, and their message recipients, including parents or caregivers of enrolled students and enrolled students. You will only use the Blackboard Reach service to send messages to the number and type of Authorized Users specified in the Order Form, and to the extent not so specified, as defined herein. You will provide all contact data for Authorized Users. Unless otherwise indicated on an Order Form, messages may only be sent to recipients located within the 48 contiguous United States, Alaska and Hawaii, and Canada.

25.3 Your Representations. If you utilize the Blackboard Reach service to contact any Authorized User, you represent and warrant that you will comply with all applicable laws and contracts in connection with use of contact information for such Authorized User and with respect to the content and transmission of messages sent using the Two-Way Messaging functionality. You represent, warrant and covenant that you will not use the Blackboard Reach service for the purpose of sending commercial messages, including, without limitation, offers to purchase, sell, barter or lease commercial products, goods, or services.

25.4 Translation Service. Through the Blackboard Reach service, messages may be authored in one supported language and translated into another supported language (the "**Translation Service**"). We do not guarantee that messages translated through the Translation Service will be free of errors or mistakes. Moreover, the Translation Service may not be generally available at the time you purchase the Blackboard Reach service. You agree that if the Translation Service is not

available to you during the Term, then (1) Blackboard is not in breach of this Agreement and (2) you are not owed any refund of fees paid by you to Blackboard. You shall not be permitted to use the Translation Service to translate more than 800 characters per calendar month per FTE (the "**Translation Limit**"). In the event that you exceed the Translation Limit, we reserve the right to charge you additional fees not exceeding our estimated incremental costs, including applicable fees and taxes, for each character translated beyond the Translation Limit. Blackboard reserves the right to charge for overages as they occur throughout the term, provided however, any failure by Blackboard to timely invoice for any overages shall not constitute a waiver of your obligation to pay such fees.

EXHIBIT C

TIPS VENDOR AGREEMENT

Between _____ Blackboard Inc. _____ and
(Company Name)

THE INTERLOCAL PURCHASING SYSTEM (TIPS),
a Department of Texas Education Service Center Region 8 for
TIPS RFP 210101 Technology Solutions, Products, and Services

General Information

The Vendor Agreement ("Agreement") made and entered into by and between The Interlocal Purchasing System (hereinafter referred to as "TIPS" respectfully) a government cooperative purchasing program authorized by the Region 8 Education Service Center, having its principal place of business at 4845 US Hwy 271 North, Pittsburg, Texas 75686. This Agreement consists of the provisions set forth below, including provisions of all Attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any Attachment, the provisions set forth shall control unless otherwise agreed by the parties in writing and by signature and date on the attachment.

A Purchase Order, Agreement or Contract is the TIPS Member's approval providing the authority to proceed with the negotiated delivery order under the Agreement. Special terms and conditions as agreed between the Vendor and TIPS Member should be added as addendums to the Purchase Order, Agreement or Contract. Items such as certificate of insurance, bonding requirements, small or disadvantaged business goals are some, but not all, of the addendums possible.

Terms and Conditions

Freight

All quotes to members shall provide a line item for cost for freight or shipping regardless of if there is a charge or not. If no charge for freight or shipping, indicate by stating "No Charge" or "\$0", "included in price" or other similar indication. Otherwise, all shipping, freight or delivery charges shall be passed through to the TIPS Member at cost with no markup and said charges shall be agreed by the TIPS Member unless alternative shipping terms are agreed by TIPS as a result of the proposal award.

Warranty Conditions

All new supplies equipment and services shall include **manufacturer's minimum standard warranty** unless otherwise agreed to in writing. Vendor shall be legally permitted to sell all products offered for sale to TIPS Members if the offering is included in the Request for Proposal category. All goods proposed and sold shall be new unless clearly stated in writing.

Customer Support

The Vendor shall provide timely and accurate customer support for orders to TIPS Members as agreed by the Parties. Vendors shall respond to such requests within a commercially reasonable time after receipt of the request. If support and/or training is a line item sold or packaged with a sale, support shall be as agreed with the TIPS Member.

Agreements

Agreements for purchase will normally be put into effect by means of a purchase order(s) executed by

authorized agents of the TIPS Member participating government entities, but other means of placing an order may be used at the Member's discretion.

Tax exempt status

Most TIPS Members are tax exempt and the related laws and/or regulations of the controlling jurisdiction(s) of the TIPS Member shall apply.

Assignments of Agreements

No assignment of this Agreement may be made without the prior notification of TIPS. Written approval of TIPS shall not be unreasonably withheld. Payment for delivered goods and services can only be made to the awarded Vendor, Vendor designated reseller or vendor assigned company.

Disclosures

- Vendor and TIPS affirms that he/she or any authorized employees or agents has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.
- Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with the TIPS program.
- The Vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement.

Term and Renewal of Agreements: **See Attachment A**

Automatic Renewal Clauses Incorporated in Awarded Vendor Agreements with TIPS Members Resulting from the Solicitation and with the Vendor Named in this Agreement.

No Agreement for goods or services with a TIPS Member by the awarded vendor named in this Agreement that results from the solicitation award named in this Agreement, may incorporate an automatic renewal clause that exceeds month to month terms with which the TIPS Member must comply. All renewal terms incorporated in an Agreement by the vendor with the TIPS Member shall only be valid and enforceable when the vendor receives written confirmation by purchase order, executed Agreement or other written instruction issued by the TIPS Member for any renewal period. The purpose of this clause is to avoid a TIPS Member inadvertently renewing an Agreement during a period in which the governing body of the TIPS Member has not properly appropriated and budgeted the funds to satisfy the Agreement renewal. This term is not negotiable and any Agreement between a TIPS Member and a TIPS awarded vendor with an automatic renewal clause that conflicts with these terms is rendered void and unenforceable.

Shipments

The Vendor shall ship, deliver or provide ordered products or services within a commercially reasonable time after the receipt of the order from the TIPS Member. If a delay in said delivery is anticipated, the Vendor shall notify TIPS Member as to why delivery is delayed and shall provide an estimated time for completion of the order. TIPS or the requesting entity may cancel the order if estimated delivery time is not acceptable or not as agreed by the parties.

Invoices

Each invoice or pay request shall include the TIPS Member's purchase order number or other identifying designation as provided in the order by the TIPS Member. If applicable, the shipment tracking number or pertinent information for verification of TIPS Member receipt shall be made available upon request.

Payments

The TIPS Member will make payments directly to the Vendor, the vendor assigned dealer or as agreed by the Vendor and the TIPS Member after receiving invoice and in compliance with applicable payment statute(s), whichever is the greater time or as otherwise provided by an agreement of the parties.

Pricing

Price increases will be honored according to the terms of the solicitation. All pricing submitted to TIPS shall include the participation fee, as provided in the solicitation, to be remitted to TIPS by the Vendor. Vendor will not show adding the fee to the invoice presented to TIPS Member customer.

Participation Fees

The Participation Fee that was published as part of the Solicitation and the fee published is the legally effective fee, along with any fee conditions stated in the RFP. Collection of the fees by TIPS is required under Texas Government Code §791.011 Et seq. Vendor or vendor assigned dealer agrees to pay the participation fee for all Agreement sales to TIPS on a monthly scheduled report or as otherwise agreed by the parties. To report sales, login to the TIPS Vendor Portal and click on the PO's and Payments tab. Pages 3-7 of the Vendor Portal User Guide will walk you through the process of reporting sales to TIPS. Please refer to the TIPS Accounting FAQ's for more information about reporting sales and if you have further questions, contact the Accounting Team at accounting@tips-usa.com. The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement and submitting same to TIPS. Failure to render the participation fee to TIPS shall constitute a breach of this agreement with our parent governmental entity, Texas Education Service Center Region 8, as established by the Texas legislature and shall be grounds for termination of this agreement and any other agreement held with TIPS and possible legal action. TIPS reserves all rights under the law to collect the fees due. Please contact TIPS at tips@tips-usa.com or call (866) 839-8477 if you have questions about paying fees.

Indemnity

The Vendor agrees to indemnify and hold harmless and defend TIPS, TIPS Member(s), officers and employees from and against all claims and suits by third parties for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and reasonable attorney's fees, arising out of, or resulting from, Vendor's performance under this Agreement, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, or invitees. Parties found liable shall pay their proportionate share of damages as agreed by the parties or as ordered by a court of competent jurisdiction over the case. **NO LIMITATION OF LIABILITY FOR DAMAGES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARE PERMITTED OR AGREED BY TIPS/ESC REGION 8.** Per Texas Education Code §44.032(f), and pursuant to its requirements only, reasonable Attorney's fees are recoverable by the prevailing party in any dispute resulting in litigation.

State of Texas Franchise Tax

By signature hereon, the bidder hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

Miscellaneous

The Vendor acknowledges and agrees that continued participation in TIPS is subject to TIPS sole discretion and that any Vendor may be removed from the participation in the Program at any time with or without cause. Nothing in the Agreement or in any other communication between TIPS and the Vendor may be construed as a guarantee that TIPS or TIPS Members will submit any orders at any time. TIPS reserves the right to request additional proposals for items or services already on Agreement at any time.

Purchase Order Pricing/Product Deviation

If a deviation of pricing/product on a purchase order or contract modification occurs between the Vendor and the TIPS Member, TIPS must be notified within five (5) business days of receipt of change order.

Termination for Convenience of TIPS Agreement Only

TIPS reserves the right to terminate this agreement for cause or no cause for convenience with a thirty (30) days prior written notice. Termination for convenience is conditionally required under Federal Regulations 2 CFR part 200 if the customer is using federal funds for the procurement. All purchase orders presented to the Vendor, but not fulfilled by the Vendor, by a TIPS Member prior to the actual termination of this agreement shall be honored at the option of the TIPS Member. The awarded vendor may terminate the agreement with ninety (90) days prior written notice to TIPS 4845 US Hwy North, Pittsburg, Texas 75686.

The vendor will be paid for goods and services delivered prior to the termination provided that the goods and services were delivered in accordance with the terms and conditions of the terminated agreement. This termination clause does not affect the sales agreements executed by the Vendor and the TIPS Member customer pursuant to this agreement. TIPS Members may negotiate a termination for convenience clause that meets the needs of the transaction based on applicable factors, such as funding sources or other needs.

TIPS Member Purchasing Procedures

Usually, purchase orders or their equal are issued by participating TIPS Member to the awarded vendor and should indicate on the order that the purchase is per the applicable TIPS Agreement number. Orders are typically emailed to TIPS at tips@tips-usa.com.

- Awarded vendor delivers goods/services directly to the participating member.
- Awarded vendor invoices the participating TIPS Member directly.
- Awarded vendor receives payment directly from the participating member.
- Awarded vendor reports sales monthly to TIPS (unless prior arrangements have been made with TIPS for an alternative submission schedule).

Licenses

Awarded vendor shall maintain, in current status, all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded vendor. Awarded vendor shall remain reasonably fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of goods or services under the Agreement. TIPS and TIPS Members reserves the right to stop work and/or cancel an order or terminate this or any other sales Agreement of any awarded vendor whose license(s) required for performance under this Agreement have expired, lapsed, are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.

Novation

If awarded vendor sells or transfers all assets, rights or the entire portion of the assets or rights required to perform this Agreement, a successor in interest must guarantee to perform all obligations under this Agreement. A simple change of name agreement will not change the Agreement obligations of awarded vendor. TIPS will consider Contract Assignments on a case-by-case basis. TIPS must be notified within five (5) business days of the transfer of assets or rights.

Site Requirements (only when applicable to service or job)

- **Cleanup:** When performing work on site at a TIPS Member's property, awarded vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by TIPS Member or as agreed by the parties. Upon completion of work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.
- **Preparation:** Awarded vendor shall not begin a project for which TIPS Member has not prepared the site, unless awarded vendor does the preparation work at no cost, or until TIPS Member includes the cost of site preparation in a purchase order. Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.
- **Registered sex offender restrictions:** For work to be performed at schools, awarded vendor agrees that no employee of a sub-contractor who has been adjudicated to be a registered sex offender will perform work at any time when students are, or reasonably expected to be, present unless

otherwise agreed by the TIPS Member. Awarded vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the TIPS Member's discretion.

Awarded vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge. **Safety measures:** Awarded vendor shall take all reasonable precautions for the safety of employees on the worksite and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

Smoking

Persons working under Agreement shall adhere to the TIPS Member's or local smoking statutes, codes or policies.

Marketing

Awarded vendor agrees to allow TIPS to use their name and logo within TIPS website, marketing materials and advertisement subject to any reasonable restrictions provided to TIPS in the Proposal to the Solicitation. The Vendor may submit an acceptable use directive for Vendor's names and logos with which TIPS agrees to comply. Any use of TIPS name and logo or any form of publicity, inclusive of press release, regarding this Agreement by awarded vendor must have prior approval from TIPS which will not be unreasonably withheld. Request may be made by email to TIPS@TIPS-USA.COM

Supplemental Agreements

The TIPS Member entity participating in the TIPS Agreement and awarded vendor may enter into a separate Supplemental Agreement or contract to further define the level of service requirements over and above the minimum defined in this Agreement such as but not limited to, invoice requirements, ordering requirements, specialized delivery, etc. Any Supplemental Agreement or contract developed as a result of this Agreement is exclusively between the TIPS Member entity customer and the Vendor. TIPS, its agents, TIPS Members and employees not a party to the Supplemental Agreement with the TIPS Member customer, shall not be made party to any claim for breach of such agreement unless named and agreed by the Party in question in writing in the agreement. If a Vendor submitting a Proposal requires TIPS and/or TIPS Member to sign an additional agreement, those agreements shall comply with the award made by TIPS to the Vendor. Supplemental Vendor's Agreement documents may not become part of TIPS's Agreement with vendor unless and until an authorized representative of TIPS reviews and approves it. TIPS review and approval may be at any time during the life of this Vendor Agreement. TIPS permits TIPS Members to negotiate additional terms and conditions with the Vendor for the provision of goods or services under the Vendor's TIPS Agreement so long as they do not materially conflict with this Agreement.

Survival Clause

All applicable sales, leases, Supplemental Agreements, contracts, software license agreements, warranties or service agreements that were entered into between Vendor and TIPS or the TIPS Member Customer under the terms and conditions of this Agreement shall survive the expiration or termination of this Agreement. All Orders, Purchase Orders issued, or contracts executed by TIPS or a TIPS Member and accepted by the Vendor prior to the expiration or termination of this agreement, shall survive expiration or termination of the Agreement, subject to previously agreed terms and conditions agreed by the parties or as otherwise specified herein relating to termination of this agreement.

Legal obligations

It is the responding Vendor's responsibility to be aware of and comply with all local, state and federal laws governing the sale of products/services identified in the applicable Solicitation that resulted in this Vendor Agreement and any awarded Agreement thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

Audit rights

Due to transparency statutes and public accountability requirements of TIPS and TIPS Members', the awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by TIPS Member that utilizes this Agreement. TIPS and Region 8 ESC each reserve the right to audit the accounting of TIPS related purchases for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. In order to ensure and confirm compliance with this agreement, TIPS shall have authority to conduct audits of Awarded Vendor's pricing or TIPS transaction documentation with TIPS Members with 30 days' notice unless the audit is ordered by a Court Order or by a Government Agency with authority to do so without notice. Notwithstanding the foregoing, in the event that TIPS is made aware of any pricing being offered to eligible entities that is materially inconsistent with the pricing under this agreement, TIPS shall have the ability to conduct the audit internally or may engage a third- party auditing firm to investigate any possible non-compliant conduct or may terminate the Agreement according to the terms of this Agreement. In the event of an audit, the requested materials shall be reasonably provided in the time, format and at the location acceptable to Region 8 ESC or TIPS. TIPS agrees not to perform a random audit the TIPS transaction documentation more than once per calendar year but reserves the right to audit for just cause or as required by any governmental agency or court with regulatory authority over TIPS or the TIPS Member.

Force Majeure

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

Project Delivery Order Procedures

The TIPS Member having approved and signed an interlocal agreement, or other TIPS Membership document, may make a request of the awarded vendor under this Agreement when the TIPS Member desires goods or services awarded to the Vendor. Notification may occur via phone, the web, courier, email, fax, or in person. Upon notification of a pending request, the awarded vendor shall acknowledge the TIPS Member's request as soon as possible but must make contact with the TIPS Member within two working days.

Status of TIPS Members as Related to This Agreement

TIPS Members stand in the place of TIPS as related to this agreement and have the same access to the proposal information and all related documents. TIPS Members have all the same rights under the awarded Agreement as TIPS.

Vendor's Resellers as Related to This Agreement

Vendor's Named Resellers under this Agreement shall comply with all terms and conditions of this agreement and all addenda or incorporated documents. All actions related to sales by Authorized Vendor's Resellers under this Agreement are the responsibility of the Awarded Vendor.

Support Requirements

If there is a dispute between the awarded vendor and TIPS Member, TIPS or its representatives will assist in conflict resolution or third party if requested by either party. TIPS, or its representatives, reserves the right to inspect any project and audit the awarded Vendor's TIPS project files, documentation and correspondence related to the requesting TIPS Member's order. If there are confidentiality requirements by either party, TIPS shall comply to the extent permitted by law.

Incorporation of Solicitation

The TIPS Solicitation which resulted in this Vendor Agreement, whether a Request for Proposals, the

Request for Competitive Sealed Proposals or Request for Qualifications solicitation, or other, the Vendor's response to same and all associated documents and forms made part of the solicitation process, including any addenda, are hereby incorporated by reference into this Agreement as if copied verbatim.

SECTION HEADERS OR TITLES

THE SECTION HEADERS OR TITLES WITHIN THIS DOCUMENT ARE MERELY GUIDES FOR CONVENIENCE AND ARE NOT FOR CLASSIFICATION OR LIMITING OF THE RESPONSIBILITIES OF THE PARTIES TO THIS DOCUMENT.

STATUTORY REQUIREMENTS

Texas governmental entities are prohibited from doing business with companies that fail to certify to this condition as required by Texas Government Code Sec. 2270. By executing this agreement, you certify that you are authorized to bind the undersigned Vendor and that your company (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Agreement. You certify that your company is not listed on and does not and will not do business with companies that are on the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>

You certify that if the certified statements above become untrue at any time during the life of this Agreement that the Vendor will notify TIPS within three (3) business day of the change by a letter on Vendor's letterhead from and signed by an authorized representative of the Vendor stating the non-compliance decision and the TIPS Agreement number and description at:

Attention: General Counsel
ESC Region 8/The Interlocal Purchasing System (TIPS)4845 Highway 271 North
Pittsburg, TX,75686

And by an email sent to bids@tips-usa.com

Insurance Requirements

The undersigned Vendor agrees to maintain the below minimum insurance requirements for TIPS Contract Holders.

General Liability	\$1,000,000 each Occurrence/ Aggregate Automobile
Liability	\$300,000 Includes owned, hired & non-owned
Workers' Compensation	Statutory limits for the jurisdiction in which the Vendor performs under this Agreement.
Umbrella Liability	\$1,000,000

When the contractor or its subcontractors are liable for any damages or claims, the contractors' policy, when the Vendor is responsible for the claim, must be primary over any other valid and collectible insurance carried by the District. Any immunity available to TIPS or TIPS Members shall not be used as a defense by the contractor's insurance policy. The coverages and limits are to be considered minimum requirements and in no way limit the liability of the Contractor(s). Insurance shall be written by a carrier with an A-; VII or better rating in accordance with current A.M. Best Key Rating Guide. Only deductibles applicable to property damage are acceptable, unless proof of retention funds to cover said deductibles is provided. "Claims made" policies will not be accepted. Vendor's required minimum coverage shall not be suspended, voided, cancelled, non-renewed or reduced in coverage or in limits unless replaced by a policy that provides the minimum required coverage except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to TIPS or the TIPS Member if a project or pending delivery of an order is ongoing. Upon request, certified copies of all insurance policies shall be furnished to the TIPS or the TIPS Member.

Special Terms and Conditions

- **Orders:** All vendor orders received from TIPS Members must be emailed to TIPS at tipspo@tips-

usa.com. Should a TIPS Member send an order directly to the Vendor, it is the Vendor's responsibility to forward a copy of the order to TIPS at the email above within 3 business days and confirm its receipt with TIPS.

- **Vendor Encouraging Members to bypass TIPS agreement:** Encouraging TIPS Members to purchase directly from the Vendor or through another agreement, when the Member has requested using the TIPS cooperative Agreement or price, and thereby bypassing the TIPS Agreement is a violation of the terms and conditions of this Agreement and will result in removal of the Vendor from the TIPS Program.
- **Order Confirmation:** All TIPS Member Agreement purchase orders are approved daily by TIPS and sent to vendor. The vendor should confirm receipt of orders to the TIPS Member (customer) within 3 business days.
- **Vendor custom website for TIPS:** If Vendor is hosting a custom TIPS website, updated pricing when effective. TIPS shall be notified when prices change in accordance with the award.
- **Back Ordered Products:** If product is not expected to ship within the time provided to the TIPS member by the Vendor, customer is to be notified within 3 business days and appropriate action taken based on customer request.

The TIPS Vendor Agreement Signature Page is inserted here.

Attachment A

To the extent that any other term of years is referenced in the Agreement, the following controls as to term of years.

Term of Agreement and Renewals

The Agreement with TIPS is for approximately five (5) years with an option for renewal for an additional one (1) consecutive year. If TIPS offers the renewal extension year, the Vendor will be notified by email to the primary contact of the awarded Vendor and shall be deemed accepted by the Vendor unless the awarded Vendor notifies TIPS of its objection to the additional term. TIPS may or may not exercise the available extension(s) provided in the original solicitation beyond the base five-year term. Whether or not to offer the extension is at the sole discretion of TIPS.

“Start Date” for Term Calculation Purposes Only: Regardless of actual award/effective date of Contract, for Agreement “term” calculation purposes only, the Agreement “start date” is the last day of the month that Award Notifications are anticipated as published in the Solicitation

Example: *If the anticipated award date published in the Solicitation is May 22, but extended negotiations delay award until June 27, The end date of the resulting initial “five-year” term Agreement, (which is subject to an extension(s)) will still be May 31, 2025.*

“Termination Date”: The scheduled Agreement “termination date” shall be the last day of the month of the month of the Original Solicitation’s Anticipated Award Date plus five years.

Example: *If the original term is approximately five years, and the solicitation provides an anticipated award date of May 22, 2020, the expiration date of the original five-year term shall be May 31, 2025.*

Extensions: Any extensions of the original term shall begin on the next day after the day the original term expires.

Example Following the Previous Example: *If TIPS offers a one-year extension, the expiration of the extended term shall be May 31, 2026.*

TIPS Vendor Agreement Signature Form

RFP 210101 Technology Solutions, Products and Services

Company Name _____

Address _____

City _____ State _____ Zip _____

Phone _____ Fax _____

Email of Authorized Representative _____

Name of Authorized Representative _____

Title _____

Signature of Authorized Representative _____



Date _____

TIPS Authorized Representative Name Meredith Barton

Title Chief Operating Officer

TIPS Authorized Representative Signature Meredith Barton

Approved by ESC Region 8 David Wayne Fitts

Date 5-13-2021

NOTICE TO MEMBERS REGARDING ATTRIBUTE RESPONSES

TIPS VENDORS RESPOND TO ATTRIBUTE QUESTIONS AS PART OF TIPS COMPETITIVE SOLICITATION PROCESS. THE VENDOR'S RESPONSES TO ATTRIBUTE QUESTIONS ARE INCLUDED HEREIN AS "SUPPLIER RESPONSE." PLEASE BE ADVISED THAT DEVIATIONS, IF ANY, IN VENDOR'S RESPONSE TO ATTRIBUTE QUESTIONS MAY NOT REFLECT VENDOR'S FINAL ATTRIBUTE RESPONSE, WHICH IS SUBJECT TO NEGOTIATIONS PRIOR TO AWARD. PLEASE CONTACT THE TIPS OFFICE AT 866-839-8477 WITH QUESTIONS OR CONCERNS REGARDING VENDOR ATTRIBUTE RESPONSE DEVIATIONS. PLEASE KEEP IN MIND THAT TIPS DOES NOT PROVIDE LEGAL COUNSEL TO MEMBERS. TIPS RECOMMENDS THAT YOU CONSULT YOUR LEGAL COUNSEL WHEN EXECUTING CONTRACTS WITH OR MAKING PURCHASES FROM TIPS VENDORS.



210101 BLACKBOARD INC. Supplier Response

Event Information

Number: 210101
Title: Technology Solutions, Products and Services
Type: Request for Proposal
Issue Date: 1/7/2021
Deadline: 2/26/2021 03:00 PM (CT)
Notes:

IF YOU ALREADY HOLD TIPS CONTRACT 200105 TECHNOLOGY SOLUTIONS, PRODUCTS AND SERVICES ("200105"), YOU DO NOT NEED TO RESPOND TO THIS SOLICITATION UNLESS YOU WISH TO REPLACE 200105 AT THIS TIME. IF YOU HOLD 200105, CHOOSE TO RESPOND HEREIN, AND ARE AWARDED ON THIS CONTRACT, YOUR 200105 WILL BE TERMINATED AND REPLACED BY THIS CONTRACT.

IF YOU HOLD ANY OF THE FOLLOWING TIPS CONTRACTS AND YOU DO NOT HOLD 200105 OR WISH TO REPLACE 200105 AT THIS TIME, PER TIPS PRIOR NOTIFICATION, YOU MUST RESPOND TO THIS SOLICITATION BECAUSE YOUR SPECIFIC CONTRACT IS BEING CONSOLIDATED INTO OR REPLACED BY THIS CONTRACT.

- TIPS 181204 Notification Systems
- TIPS 181201 Data Backup Disaster Recovery
- TIPS 181203 Management Software and Services
- TIPS 180701 Distance Learning Services and Hardware
- TIPS 170904 Managed Print Services
- TIPS 180503 Software
- TIPS 181102 Internet & Network Security
- TIPS 180306 Technology Solutions, Products and Services

(2)

- TIPS 190302 Technology Solutions, Products and Services

(3)

TIPS RESERVES THE RIGHT TO ISSUE, REBID, OR CANCEL ANY PLANNED SOLICITATIONS AT ANY TIME AS NECESSARY FOR THE NEEDS OF TIPS, TIPS VENDORS, AND TIPS MEMBERS.

Contact Information

Address: Region 8 Education Service Center
 4845 US Highway 271 North
 Pittsburg, TX 75686
 Phone: +1 (866) 839-8477
 Email: bids@tips-usa.com

BLACKBOARD INC. Information

Address: 1111 19th Street NW
Washington, DC 20036
Phone: (202) 463-4860

By submitting your response, you certify that you are authorized to represent and bind your company.

Lindsey Fishback

Signature

Submitted at 2/16/2021 12:00:15 PM

lindsey.fishback@blackboard.com

Email

Requested Attachments

Vendor Agreement

1_Blackboard Response_210101 Vendor Agreement.pdf

The vendor must download the Vendor Agreement from the attachment tab, fill in the requested information and upload the completed agreement.

DO NOT UPLOAD encrypted or password protected files.

Agreement Signature Form

2_Blackboard Response_210101 Agreement Signature Form.pdf

If you have not taken exception or deviation to the agreement language in the solicitation attributes, download the AGREEMENT SIGNATURE FORM from the "ATTACHMENTS" tab. This PDF document is a fillable form. Download the document to your computer, fill in the requested company information, print the file, SIGN the form, SCAN the completed and signed AGREEMENT SIGNATURE FORM, and upload here.

If you have taken exception to any of the agreement language and noted the exception in the deviations section of the attributes for the agreement, complete the AGREEMENT SIGNATURE FORM, but DO NOT SIGN until those deviations have been negotiated and resolved with TIPS management. Upload the unsigned form here, because this is a required document.

Pricing Form 1

3_Blackboard Response_210101 Pricing Form 1.xlsx

The vendor must download the PRICING SPREADSHEET SHEET from the attachment tab, fill in the requested information and upload the completed spreadsheet.

DO NOT UPLOAD encrypted or password protected files.

Pricing Form 2

4_Blackboard Response_210101 Pricing Form 2.xlsx

The vendor must download the PRICING SPREADSHEET SHEET from the attachment tab, fill in the requested information and upload the completed spreadsheet.

DO NOT UPLOAD encrypted or password protected files.

Reference Form

5_Blackboard Response_Reference Form.xls

The vendor must download the References spreadsheet from the attachment tab, fill in the requested information and upload the completed spreadsheet. DO NOT UPLOAD encrypted or password protected files.

Proposed Goods and Services

6_Blackboard Goods and Services.xlsx

Please upload one or more documents or sheets describing your offerings, line cards, catalogs, links to offerings OR list links to your offerings that illustrate the catalog of proposed lines of goods and or services you carry and offer under this proposal. It does not have to be exhaustive but should, at a minimum tell us what you are offering. It could be as simple as a sheet with your link to your online catalog of goods and services.

D/M/WBE Certification OPTIONAL

No response

D/M/WBE Certification documentation may be scanned and uploaded if you desire to claim your status as one of the identified enterprises. (Disadvantaged Business Enterprise, Minority Business Enterprise and/or Woman Business Enterprise) If vendor has more than one certification scan into one document. (PDF Format ONLY)

DO NOT UPLOAD encrypted or password protected files.

Warranty

No response

Warranty information (if applicable) must be scanned and uploaded. (PDF Format ONLY)
DO NOT UPLOAD encrypted or password protected files.

Supplementary

No response

Supplementary information may be scanned and uploaded. (Company information, brochures, catalogs, etc.) (PDF Format ONLY)
DO NOT UPLOAD encrypted or password protected files.

All Other Certificates

No response

All Other Certificates (if applicable) must be scanned and uploaded. If vendor has more than one other certification scan into one document. (PDF Format ONLY)
DO NOT UPLOAD encrypted or password protected files.

Logo and Other Company Marks

No response

If you desire, please upload your company logo to be added to your individual profile page on the TIPS website. If any particular specifications are required for use of your company logo, please upload that information under the Supplementary section or another non-required section under the "Response Attachment" tab. Preferred Logo Format: 300 x 225 px - .png, .eps, .jpeg preferred

Conflict of Interest Form CIQ- ONLY REQUIRED IF A CONFLICT EXISTS PER THE INSTRUCTIONS

No response

ONLY REQUIRED IF A CONFLICT EXISTS PER THE INSTRUCTIONS
Conflict of Interest Form for Vendors that are required to submit the form. The Conflict of Interest Form is included in the Base documents or can be found at <https://www.tips-usa.com/assets/documents/docs/CIQ.pdf>.

Certification of Corporate Offerer Form- COMPLETE ONLY IF OFFERER IS A CORPORATION

No response

COMPLETE AND UPLOAD FORM IN ATTACHMENTS SECTION ONLY IF OFFERER IS A CORPORATION

Disclosure of Lobbying Activities Standard Form LLL

No response

ONLY IF you answered "I HAVE Lobbied per above" to attribute #66, please download and complete and upload the Standard Form-LLL, "disclosure Form to Report Lobbying," in the Response attachments section.

Confidentiality Claim Form

15_Blackboard Response_CONFIDENTIALITY CLAIM FORM.pdf

REQUIRED CONFIDENTIALITY FORM. Complete the form according to your company requirements, make any desired attachments and upload to the appropriate section under "Response Attachments" THIS FORM DETERMINES HOW ESC8/TIPS RESPONDS TO LEGAL PUBLIC INFORMATION REQUESTS.

Current W-9 Tax Form

16_Blackboard Inc_W-9.pdf

You are required by TIPS to upload a current W-9 Internal Revenue Service (IRS) Tax Form for your entity. This form will be utilized by TIPS to properly identify your entity. Additionally, if not designated "Confidential" in your proposal response, this W-9 may be accessed by TIPS Members for the purpose of making TIPS purchases from you in the event that you are awarded. If you wish to designate your required W-9 confidential, please do so according to the terms of the Confidentiality Claim Form which is an attachment to this solicitation.

Response Attachments

Blackboard Inc._Appendix 1 - Tips Pricing RFP.xlsx

Blackboard Inc. Appendix 1 - Pricing

Blackboard Inc. Response_TIPS_ Bid#210101 (Technology Solutions, Products and Services).pdf

Blackboard Response

Bid Attributes

1 Yes - No

Disadvantaged/Minority/Women Business Enterprise - D/M/WBE (Required by some participating governmental entities) Vendor certifies that their firm is a D/M/WBE? Vendor must upload proof of certification to the "Response Attachments" D/M/WBE CERTIFICATES section.

NO

2 Yes - No

Historically Underutilized Business - HUB (Required by some participating governmental entities) Vendor certifies that their firm is a HUB as defined by the State of Texas at <https://comptroller.texas.gov/purchasing/vendor/hub/> or in a HUBZone as defined by the US Small Business Administration at <https://www.sba.gov/offices/headquarters/ohp>

Proof of one or both may be submitted. Vendor must upload proof of certification to the "Response Attachments" HUB CERTIFICATES section.

No

3 Yes - No

The Vendor can provide services and/or products to all 50 US States?

Yes

4 States Served:

If answer is NO to question #3, please list which states can be served. (Example: AR, OK, TX)

No response

5 Company and/or Product Description:

This information will appear on the TIPS website in the company profile section, if awarded a TIPS contract. (Limit 750 characters.)

Blackboard is an EdTech platform, aimed at driving student success and institutional performance.

This platform builds on the new wave of innovation, enabling a personalized, connected experience that leverages Artificial Intelligence to derive insights, that will ultimately improve outcomes for students.

6 Primary Contact Name

Primary Contact Name

Lindsey Fishback

7 Primary Contact Title

Primary Contact Title

Regional Vice President

8 Primary Contact Email

Primary Contact Email

Lindsey.Fishback@blackboard.com

9 Primary Contact Phone

Enter 10 digit phone number. (No dashes or extensions)
Example: 8668398477

5124266672

10	Primary Contact Fax Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="No response"/>
11	Primary Contact Mobile Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="5124266672"/>
12	Secondary Contact Name Secondary Contact Name <input type="text" value="Lindsey Fishback"/>
13	Secondary Contact Title Secondary Contact Title <input type="text" value="Regional Vice President"/>
14	Secondary Contact Email Secondary Contact Email <input type="text" value="Lindsey.Fishback@blackboard.com"/>
15	Secondary Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="5124266672"/>
16	Secondary Contact Fax Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="No response"/>
17	Secondary Contact Mobile Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="No response"/>
18	Admin Fee Contact Name Admin Fee Contact Name. This person is responsible for paying the admin fee to TIPS. <input type="text" value="Lindsey Fishback"/>
19	Admin Fee Contact Email Admin Fee Contact Email <input type="text" value="Lindsey.Fishback@blackboard.com"/>

20	Admin Fee Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="5124266672"/>
21	Purchase Order Contact Name Purchase Order Contact Name. This person is responsible for receiving Purchase Orders from TIPS. <input type="text" value="Lindsey Fishback"/>
22	Purchase Order Contact Email Purchase Order Contact Email <input type="text" value="Lindsey.Fishback@blackboard.com"/>
23	Purchase Order Contact Phone Enter 10 digit phone number. (No dashes or extensions) Example: 8668398477 <input type="text" value="5124266672"/>
24	Company Website Company Website (Format - www.company.com) <input type="text" value="www.blackboard.com"/>
25	Federal ID Number Federal ID Number also known as the Employer Identification Number (EIN). Numeric only. (Format: 123456789) <input type="text" value="522081178"/>
26	Primary Address Primary Address <input type="text" value="11720 Plaza America Drive 11th Floor"/>
27	Primary Address City Primary Address City <input type="text" value="Reston"/>
28	Primary Address State Primary Address State (2 Digit Abbreviation) <input type="text" value="VA"/>
29	Primary Address Zip Primary Address Zip <input type="text" value="20190"/>
30	Search Words: Please list search words to be posted in the TIPS database about your company that TIPS website users might search. Words may be product names, manufacturers, or other words associated with the category of award. YOU MAY NOT LIST NON-CATEGORY ITEMS. (Limit 500 words) (Format: product, paper, construction, manufacturer name, etc.) <input type="text" value="education, communication, learning, elementary, student, teacher, learner, app, portal, website, notification"/>

3
1

Do you want TIPS Members to be able to spend Federal grant funds with you if awarded? Is it your intent to be able to sell to our members regardless of the fund source, whether it be local, state or federal?

Most of our members receive Federal Government grants and they make up a significant portion of their budgets. The Members need to know if your company is willing to sell to them when they spend federal budget funds on their purchase. There are attributes that follow that include provisions from the federal regulations in 2 CFR part 200. Your answers will determine if your award will be designated as Federal or Education Department General Administrative Regulations (EDGAR) compliant.

Do you want TIPS Members to be able to spend Federal grant funds with you if awarded and is it your intent to be able to sell to TIPS Members regardless of the fund source, whether it be local, state or federal?

Yes

3
2

Yes - No

Certification of Residency (Required by the State of Texas) The vendor's ultimate parent company or majority owner:

(A) has its principal place of business in Texas;

OR

(B) employs at least 500 persons in Texas?

This question is required as a data gathering function for information to our members making purchases with awarded vendors. It does not affect scoring with TIPS.

No

3
3

Company Residence (City)

Vendor's principal place of business is in the city of?

Reston

3
4

Company Residence (State)

Vendor's principal place of business is in the state of?

VA

3
5**Discount Offered - CAUTION READ CAREFULLY BECAUSE VENDORS FREQUENTLY MAKE MISTAKES ON THIS ATTRIBUTE QUESTION**

Remember this is a MINIMUM discount percentage. So, be sure that the discount percentage inserted here can be applied to ANY OFFERING OF GOODS OR SERVICES THROUGHOUT THE LIFE OF THE CONTRACT

CAUTION: BE CERTAIN YOU CAN HONOR THIS MINIMUM DISCOUNT PERCENTAGE ON ANY OFFERED SERVICE OR GOOD NOW OR DURING THE LIFE OF THE CONTRACT.

What is the MINIMUM percentage discount off of any item or service you offer to TIPS Members that is in your regular catalog (as defined in the solicitation specifications document), website, store or shelf pricing or when adding new goods or services to your offerings during the life of the contract? The resulting price of any goods or services Catalog list prices after this discount is applied is a ceiling on your pricing and not a floor because, in order to be more competitive in the individual circumstance, you may offer a larger discount depending on the items or services purchased and the quantity at time of sale.

Must answer with a number between 0% and 100%.

3
6**Yes - No**

For the duration of the Contract, Vendor agrees to provide catalog pricing, as defined in the solicitation and below, to TIPS upon request for any goods and services offered on the Vendor's TIPS Contract.

"Catalog" means the available list of tangible personal property or services, in the most current listing, regardless of date, during the life of the contract, that takes the form of a catalog, price list, schedule, shelf price or other form that:

- A. is regularly maintained by the manufacturer or Vendor of an item; and
- B. is either published or otherwise available for inspection by a customer during the purchase process;
- C. to which the minimum discount proposed by the proposing Vendor may be applied.

3
7**TIPS Administration Fee**

By submitting a proposal, I agree that all pricing submitted to TIPS shall include the Administration Fee, as designated in the solicitation or as otherwise agreed in writing which shall be remitted to TIPS by the Vendor, or the vendor's named resellers, and as agreed to in the Vendor Agreement. I agree that the fee shall not and will not be added by the Vendor as a separate line item on a TIPS member invoice, quote, proposal or any other written communications with the TIPS member.

3
8**Yes - No**

Vendor agrees to remit to TIPS the required administration fee or, if resellers are named, Vendor agrees to guarantee the fee remittance by or for the reseller named by the vendor?

TIPS/ESC Region 8 is required by Texas Government Code § 791 to be compensated for its work and thus, failure to agree shall render your response void and it will not be considered.

3
9**Yes - No**

Do you offer additional discounts to TIPS members for large order quantities or large scope of work?

40 Years experience in category of goods or services

Company years experience in this category of goods or services? This is an evaluation criterion worth a maximum of 10 points. See RFP for more information.

24

41 Resellers:

Does the vendor have resellers that it will name under this contract? Resellers are defined as other companies that sell your products under an agreement with you, the awarded vendor of TIPS.

EXAMPLE: BIGmart is a reseller of ACME brand televisions. If ACME were a TIPS awarded vendor, then ACME would list BIGmart as a reseller.

(If applicable, Vendor should add all Authorized Resellers within the TIPS Vendor Portal upon award).

No

42 Pricing discount percentage are guaranteed for?

Does the vendor agrees to honor the proposed pricing discount percentage off regular catalog (as defined in the RFP document), website, store or shelf pricing for the term of the award?

YES

43 Right of Refusal

Does the proposing vendor wish to reserve the right not to perform under the awarded agreement with a TIPS member at vendor's discretion?

No

44 NON-COLLUSIVE BIDDING CERTIFICATE

By submission of this bid or proposal, the Bidder certifies that:

- 1) This bid or proposal has been independently arrived at without collusion with any other Bidder or with any Competitor;
- 2) This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids, or proposals for this project, to any other Bidder, Competitor or potential competitor:
- 3) No attempt has been or will be made to induce any other person, partnership or corporation to submit or not to submit a bid or proposal;
- 4) The person signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties being applicable to the Bidder as well as to the person signing in its behalf.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.

4
5**CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ - Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement?**

Do you have any CONFLICT OF INTEREST TO REPORT OR DISCLOSE under this statutory requirement? YES or NO

If you have a conflict of interest as described in this form or the Local Government Code Chapter 176, cited therein- you are required to complete and file with TIPS.

You may find the Blank CIQ form on our website at:

Copy and Paste the following link into a new browser or tab:

<https://www.tips-usa.com/assets/documents/docs/CIQ.pdf>

There is an optional upload for this form provided if you have a conflict and must file the form.

4
6**Filing of Form CIQ**

If yes (above), have you filed a form CIQ by uploading the form to this RFP as directed above?

4
7**Regulatory Standing**

I certify to TIPS for the proposal attached that my company is in good standing with all governmental agencies Federal or state that regulate any part of our business operations. If not, please explain in the next attribute question.

4
8**Regulatory Standing**

Regulatory Standing explanation of no answer on previous question.

4
9**Antitrust Certification Statements (Tex. Government Code § 2155.005)**

By submission of this bid or proposal, the Bidder certifies that:

I affirm under penalty of perjury of the laws of the State of Texas that:

(1) I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;

(2) In connection with this bid, neither I nor any representative of the Company has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;

(3) In connection with this bid, neither I nor any representative of the Company has violated any federal antitrust law;

(4) Neither I nor any representative of the Company has directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

Suspension or Debarment Instructions

Instructions for Certification:

1. By answering yes to the next Attribute question below, the vendor and prospective lower tier participant is providing the certification set out herein in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participants," "person," "primary covered transaction," "principal," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and / or debarment.

5
1**Suspension or Debarment Certification**

By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above.

Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

By answering yes, you certify that no federal suspension or debarment is in place, which would preclude receiving a federally funded contract as described above.

5
2**Non-Discrimination Statement and Certification**

In accordance with Federal civil rights law, all U.S. Departments, including the U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](#) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

(Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities)

All U.S. Departments, including the USDA are equal opportunity provider, employer, and lender.

Not a negotiable term. Failure to agree by answering YES will render your proposal non-responsive and it will not be considered. I certify that in the performance of a contract with TIPS or its members, that our company will conform to the foregoing anti-discrimination statement and comply with the cited and all other applicable laws and regulations.

5 3 2 CFR PART 200 Contract Provisions Explanation

Required Federal contract provisions of Federal Regulations for Contracts for contracts with ESC Region 8 and TIPS Members:

The following provisions are required to be in place and agreed if the procurement is funded in any part with federal funds.

The ESC Region 8 and TIPS Members are the subgrantee or Subrecipient by definition. Most of the provisions are located in 2 CFR PART 200 - Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards at 2 CFR PART 200. Others are included within 2 CFR part 200 et al.

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

5 4 2 CFR PART 200 Contracts

Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Notice: Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree?

5 5 2 CFR PART 200 Termination

Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for cause after giving the vendor an appropriate opportunity and up to 30 days, to cure the causal breach of terms and conditions. ESC Region 8 and TIPS Members reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for convenience with 30 days notice in writing to the awarded vendor. The vendor would be compensated for work performed and goods procured as of the termination date if for convenience of the ESC Region 8 and TIPS Members. Any award under this procurement process is not exclusive and the ESC Region 8 and TIPS reserves the right to purchase goods and services from other vendors when it is in the best interest of the ESC Region 8 and TIPS.

Does vendor agree?

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6**2 CFR PART 200 Clean Air Act**

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$250,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to the Clean Air Act, et al above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires that the proposer certify that during the term of an award by the ESC Region 8 and TIPS Members resulting from this procurement process the vendor agrees to comply with all of the above regulations, including all of the terms listed and referenced therein.

Does vendor agree?

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7**2 CFR PART 200 Byrd Anti-Lobbying Amendment**

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that during the term and during the life of any contract with ESC Region 8 and TIPS Members resulting from this procurement process the vendor certifies to the terms included or referenced herein.

Does vendor agree?

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8**2 CFR PART 200 Federal Rule**

Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$250,000)

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, ESC Region 8 and TIPS Members requires the proposer certify that in performance of the contracts, subcontracts, and subgrants of amounts in excess of \$250,000, the vendor will be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

Does vendor certify that it is in compliance with the Clean Air Act?

5 2 CFR PART 200 Procurement of Recovered Materials

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Does vendor certify that it is in compliance with the Solid Waste Disposal Act as described above?

6 2 CFR PART 200 Rights to Inventions

If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Pursuant to the above, when the foregoing applies to ESC Region 8 and TIPS Members, Vendor certifies that during the term of an award resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in the Federal rule above.

Does vendor agree?

6 2 CFR PART 200 Domestic Preferences for Procurements

As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of 2 CFR Part 200.322, “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Moreover, for purposes of 2 CFR Part 200.322, “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics and polymer-based products such as polyvinyl chloride pipe, aggregates such as concrete, glass, including optical fiber, and lumber.

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that to the greatest extent practicable Vendor will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

Does vendor agree?

6 2 2 CFR PART 200 Ban on Foreign Telecommunications

Federal grant funds may not be used to purchase equipment, services, or systems that use “covered telecommunications” equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. “Covered telecommunications” means purchases from Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

Pursuant to the above, when federal funds are expended by ESC Region 8 and TIPS Members, Vendor certifies that Vendor will not purchase equipment, services, or systems that use “covered telecommunications”, as defined by 2 CFR §200.216 equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Does vendor agree?

6 3 Certification Regarding Lobbying

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “disclosure Form to Report Lobbying,” in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

6 4 If you answered "I HAVE lobbied" to the above Attribute Question

If you answered "I HAVE lobbied" to the above Attribute question, you must download the Lobbying Report "Standard From LLL, disclosure Form to Report Lobbying" which includes instruction on completing the form, complete and submit it in the Response Attachments section as a report of the lobbying activities you performed or paid others to perform.

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Subcontracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

Do you ever anticipate the possibility of subcontracting any of your work under this award if you are successful?

IF NO, DO NOT ANSWER THE NEXT ATTRIBUTE QUESTION. . IF YES, and ONLY IF YES, you must answer the next question YES if you want a TIPS Member to be authorized to spend Federal Grant Funds for Procurement.

NO

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ONLY IF YES TO THE PREVIOUS QUESTION OR if you ever do subcontract any part of your performance under the TIPS Agreement, do you agree to comply with the following federal requirements?

ONLY IF YES TO THE PREVIOUS QUESTION OR if you ever do subcontract any part of your performance under the TIPS Agreement,

do you agree to comply with the following federal requirements?

Federal Regulation 2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (a)The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce ; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs(1) through (5) of this section.

No response

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Indemnification

The ESC Region 8 and TIPS is a Texas Political Subdivision and a local governmental entity; therefore, is prohibited from indemnifying third parties pursuant to the Texas Constitution (Article 3, Section 52) except as specifically provided by law or as ordered by a court of competent jurisdiction. A provision in a contract to indemnify or hold a party harmless is a promise to pay for any expenses the indemnified party incurs, if a specified event occurs, such as breaching the terms of the contract or negligently performing duties under the contract. Article III, Section 49 of the Texas Constitution states that "no debt shall be created by or on behalf of the State ... " The Attorney General has counseled that a contractually imposed obligation of indemnity creates a "debt" in the constitutional sense. Tex. Att'y Gen. Op. No. MW-475 (1982). Contract clauses which require the System or institutions to indemnify must be deleted or qualified with "to the extent permitted by the Constitution and Laws of the State of Texas." Liquidated damages, attorney's fees, waiver of vendor's liability, and waiver of statutes of limitations clauses should also be deleted or qualified with "to the extent permitted by the Constitution and laws of State of Texas."

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms?

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Remedies

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit the TIPS to an arbitration resolution of any disagreement under any circumstances. Any Claim arising out of or related to the Contract, except for those specifically waived under the terms of the Contract, may, after denial of the Board of Directors, be subject to mediation at the request of either party. Any issues not resolved hereunder MAY be referred to non-binding mediation to be conducted by a mutually agreed upon mediator as a prerequisite to the filing of any lawsuit over such issue(s). The parties shall share the mediator's fee and any associated filing fee equally. Mediation shall be held in Camp or Titus County, Texas. Agreements reached in mediation shall be reduced to writing, and will be subject to the approval by the District's Board of Directors, signed by the Parties if approved by the Board of Directors, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

Do you agree to these terms?

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Remedies Explanation of No Answer

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0**Choice of Law**

The agreement between the Vendor and TIPS/ESC Region 8 and any addenda or other additions resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.
THIS DOES NOT APPLY to a vendor's agreement entered into with a TIPS Member, as the Member may be located outside Texas.

Do you agree to these terms?

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1**Venue, Jurisdiction and Service of Process**

Any proceeding, involving Region 8 ESC or TIPS, arising out of or relating to this procurement process or any contract issued by TIPS resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Camp County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world. Any dispute resolution process other than litigation shall have venue in Camp County or Titus County Texas.

Do you agree to these terms?

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2**Infringement(s)**

The successful vendor will be expected to indemnify and hold harmless the TIPS and its employees, officers, agents, representatives, contractors, assignees and designees from any and all third party claims and judgments involving infringement of patent, copyright, trade secrets, trade or service marks, and any other intellectual or intangible property rights attributed to or claims based on the Vendor's proposal or Vendor's performance of contracts awarded and approved.

Do you agree to these terms?

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3**Infringement(s) Explanation of No Answer**7
4**Contract Governance**

Any contract made or entered into by the TIPS is subject to and is to be governed by Section 271.151 et seq, Tex Loc Gov't Code. Otherwise, TIPS does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.

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Payment Terms and Funding Out Clause

Payment Terms:

TIPS or TIPS Members shall not be liable for interest or late payment fees on past-due balances at a rate higher than permitted by the laws or regulations of the jurisdiction of the TIPS Member.

Funding Out Clause:

Vendor agrees to abide by the laws and regulations, including Texas Local Government Code § 271.903, or any statutory or regulatory limitations of the jurisdiction of any TIPS Member which governs contracts entered into by the Vendor and TIPS or a TIPS Member that requires all contracts approved by TIPS or a TIPS Member are subject to the budgeting and appropriation of currently available funds by the entity or its governing body.

See statute(s) for specifics or consult your legal counsel.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered.

Do you agree to these terms?

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Insurance and Fingerprint Requirements Information

Insurance

If applicable and your staff will be on TIPS member premises for delivery, training or installation etc. and/or with an automobile, you must carry automobile insurance as required by law. You may be asked to provide proof of insurance.

Fingerprint

It is possible that a vendor may be subject to Chapter 22 of the Texas Education Code. The Texas Education Code, Chapter 22, Section 22.0834. Statutory language may be found at: <http://www.statutes.legis.state.tx.us/>

If the vendor has staff that meet both of these criterion:

- (1) will have continuing duties related to the contracted services; and
- (2) has or will have direct contact with students

Then you have "covered" employees for purposes of completing the attached form.

TIPS recommends all vendors consult their legal counsel for guidance in compliance with this law. If you have questions on how to comply, see below. If you have questions on compliance with this code section, contact the Texas Department of Public Safety Non-Criminal Justice Unit, Access and Dissemination Bureau, FAST-FACT at NCJU@txdps.state.tx.us and you should send an email identifying you as a contractor to a Texas Independent School District or ESC Region 8 and TIPS. Texas DPS phone number is (512) 424-2474.

See form in the next attribute to complete entitled:

Texas Education Code Chapter 22 Contractor Certification for Contractor Employees

Texas Education Code Chapter 22 Contractor Certification for Contractor Employees

Introduction: Texas Education Code Chapter 22 requires entities that contract with school districts to provide services to obtain criminal history record information regarding covered employees. Contractors must certify to the district that they have complied. Covered employees with disqualifying criminal histories are prohibited from serving at a school district.

Definitions: Covered employees: Employees of a contractor or subcontractor who have or will have continuing duties related to the service to be performed at the District and have or will have direct contact with students. The District will be the final arbiter of what constitutes direct contact with students. Disqualifying criminal history: Any conviction or other criminal history information designated by the District, or one of the following offenses, if at the time of the offense, the victim was under 18 or enrolled in a public school:

(a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state.

I certify that:

NONE (Section A) of the employees of Contractor and any subcontractors are covered employees, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any subcontractor will not become covered employees. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided.

OR

SOME (Section B) or all of the employees of Contractor and any subcontractor are covered employees. If this box is checked, I further certify that:

(1) Contractor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.

(2) If Contractor receives information that a covered employee subsequently has a reported criminal history, Contractor will immediately remove the covered employee from contract duties and notify the District in writing within 3 business days.

(3) Upon request, Contractor will provide the District with the name and any other requested information of covered employees so that the District may obtain criminal history record information on the covered employees.

(4) If the District objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Contractor agrees to discontinue using that covered employee to provide services at the District.

Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.

☐ None

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8**Texas Business and Commerce Code § 272 Requirements as of 9-1-2017**

SB 807 prohibits construction contracts to have provisions requiring the contract to be subject to the laws of another state, to be required to litigate the contract in another state, or to require arbitration in another state. A contract with such provisions is voidable. Under this new statute, a "construction contract" includes contracts, subcontracts, or agreements with (among others) architects, engineers, contractors, construction managers, equipment lessors, or materials suppliers. "Construction contracts" are for the design, construction, alteration, renovation, remodeling, or repair of any building or improvement to real property, or for furnishing materials or equipment for the project. The term also includes moving, demolition, or excavation. BY RESPONDING TO THIS SOLICITATION, AND WHEN APPLICABLE, THE PROPOSER AGREES TO COMPLY WITH THE TEXAS BUSINESS AND COMMERCE CODE § 272 WHEN EXECUTING CONTRACTS WITH TIPS MEMBERS THAT ARE TEXAS GOVERNMENT ENTITIES.

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9**Texas Government Code 2270 Verification Form**

Texas Government Code 2270 Verification Form

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

Our entity further certifies that it is is not listed on and we do not do business with companies that are on the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations per Texas Gov't Code 2270.0153 found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>

I swear and affirm that the above is true and correct.

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0**Logos and other company marks**

Please upload your company logo to be added to your individual profile page on the TIPS website. If any particular specifications are required for use of your company logo, please upload that information under the "Logo and Other Company Marks" section under the "Response Attachment" tab. Preferred Logo Format: 300 x 225 px - .png, .eps, .jpeg preferred

Potential uses of company logo:

* Your Vendor Profile Page of TIPS website

* Potentially on TIPS website scroll bar for Top Performing Vendors

* TIPS Quarterly eNewsletter sent to TIPS Members

* Co-branding Flyers and or email blasts to our TIPS Members (Permission and approval will be obtained before publishing)

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Solicitation Deviation/Compliance

Does the vendor agree with the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation?

No

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Solicitation Exceptions/Deviations Explanation

If the bidder intends to deviate from the General Conditions Standard Terms and Conditions or Item Specifications listed in this proposal invitation, all such deviations must be listed on this attribute, with complete and detailed conditions and information included or attached.

TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any bid based upon any deviations indicated below or in any attachments or inclusions.

In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Standard Terms and Conditions, Item Specifications, and all other information contained in this Solicitation.

Blackboard understands the intent of this RFP to result in an award of a cooperative purchasing agreement therefore, if awarded the business pursuant to this RFP, Blackboard looks forward to negotiating mutually agreeable terms with The Interlocal Purchasing System ("TIPS") based upon our standard cooperative purchasing agreement terms. The terms will outline the obligations between TIPS and Blackboard such as pricing, administrative fees (if any), and the process by which a member procures the relevant product/service. When a member of TIPS wishes to procure Blackboard's products/services via this RFP award, it will be a direct agreement between Blackboard and the member based upon Blackboard's standard licensing terms. However, if TIPS desires to negotiate standard licensing terms on behalf of their members, then such terms would be based on the following <http://agreements.blackboard.com/bbinc/blackboard-new-master-agreement-all-products.aspx> which are material to the use of the Blackboard product/services.

Competitive Procurement Solicitation Document:
Termination.

For sake of clarity, such termination shall not result in a termination of any agreements, purchase orders, or other Blackboard End-User Documentation between Blackboard and any TIPS member ("Customer").

Notice of Confidentiality of Proposed Information.

For purposes of clarification, Blackboard's pricing, pricing methodology, and technical specifications are confidential and proprietary and are protected under trade secrets, commercial, and financial information. Blackboard respectfully requests that such information and ideas not be disclosed unless required by State of Texas law.

Vendor Agreement

Blackboard understands the intent of this RFP to result in an award of a cooperative purchasing agreement therefore, if awarded the business pursuant to this RFP, Blackboard looks forward to negotiating mutually agreeable terms with TIPS based upon our standard cooperative purchasing agreement terms. The terms will outline the obligations between TIPS and Blackboard such as pricing, administrative fees (if any), and the process by which a member procures the relevant product/service. When a member of TIPS wishes to procure Blackboard's products/services via this RFP award, it will be a direct agreement between Blackboard and the member based upon Blackboard's standard licensing terms. However, if TIPS desires to also negotiate standard licensing terms on behalf of their members, then such terms would be based on the following <http://agreements.blackboard.com/bbinc/blackboard-new-master-agreement-all-products.aspx> which are material to the use of the Blackboard product/services.

Warranty (If applicable)

We warrant that (a) the Software or SaaS Services licensed to you will not contain any Software Errors (as defined below) for one year from delivery of the Software or for the term of the SaaS Services, respectively; (b) we will perform Professional Services and Hosting Services in a professional manner in accordance with industry standards.

Please see our attached Comments and Clarifications for our full requested terms.

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3**Agreement Deviation/Compliance**

Does the vendor agree with the language in the Vendor Agreement?

No

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4**Agreement Exceptions/Deviations Explanation**

If the proposing Vendor desires to deviate from the Vendor Agreement language, all such deviations must be listed on this attribute, with complete and detailed conditions and information included. TIPS will consider any deviations in its proposal award decisions, and TIPS reserves the right to accept or reject any proposal based upon any deviations indicated below. In the absence of any deviation entry on this attribute, the proposer assures TIPS of their full compliance with the Vendor Agreement.

Blackboard understands the intent of this RFP to result in an award of a cooperative purchasing agreement therefore, if awarded the business pursuant to this RFP, Blackboard looks forward to negotiating mutually agreeable terms with TIPS based upon our standard cooperative purchasing agreement terms. The terms will outline the obligations between TIPS and Blackboard such as pricing, administrative fees (if any), and the process by which a member procures the relevant product/service. When a member of TIPS wishes to procure Blackboard's products/services via this RFP award, it will be a direct agreement between Blackboard and the member based upon Blackboard's standard licensing terms. However, if TIPS desires to also negotiate standard licensing terms on behalf of their members, then such terms would be based on the following <http://agreements.blackboard.com/bbinc/blackboard-new-master-agreement-all-products.aspx> which are material to the use of the Blackboard product/services.

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5**Felony Conviction Notice**

Texas Education Code, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract." (c) This section does not apply to a publicly held corporation. The person completing this proposal certifies that they are authorized to provide the answer to this question.

Select A., B. or C.

A. My firm is a publicly held corporation; therefore, this reporting requirement is not applicable.

OR B. My firm is not owned nor operated by anyone who has been convicted of a felony, OR

C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony. (if you answer C below, you are required to provide information in the next attribute.

B. Firm not owned nor operated by felon; per above

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6**If you answered C. My Firm is owned or operated by a felon to the previous question, you are REQUIRED TO ANSWER THE FOLLOWING QUESTIONS.**

If you answered C. My Firm is owned or operated by a felon to the previous question, you must provide the following information.

1. Name of Felon(s)

2. The named person's role in the firm, and

3. Details of Conviction(s).

No response

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7**Long Term Cost Evaluation Criterion # 4.**

READ CAREFULLY and see in the RFP document under "Proposal Scoring and Evaluation". Points will be assigned to this criterion based on your answer to this Attribute. Points are awarded if you agree not increase your catalog prices (as defined herein) more than X% annually over the previous year for the life of the contract, unless an exigent circumstance exists in the marketplace and the excess price increase which exceeds X% annually is supported by documentation provided by you and your suppliers and shared with TIPS, if requested. If you agree NOT to increase prices more than 5%, except when justified by supporting documentation, you are awarded 10 points; if 6% to 14%, except when justified by supporting documentation, you receive 1 to 9 points incrementally. Price increases 14% or greater, except when justified by supporting documentation, receive 0 points.

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8**Required Confidentiality Claim Form****Required Confidentiality Claim Form**

This completed form is required by TIPS. By submitting a response to this solicitation you agree to download from the "Attachments" section, complete according to the instructions on the form, then uploading the completed form, with any confidential attachments, if applicable, to the "Response Attachments" section titled "Confidentiality Form" in order to provide to TIPS the completed form titled, "CONFIDENTIALITY CLAIM FORM". By completing this process, you provide us with the information we require to comply with the open record laws of the State of Texas as they may apply to your proposal submission. If you do not provide the form with your proposal, an award will not be made if your proposal is qualified for an award, until TIPS has an accurate, completed form from you. Read the form carefully before completing and if you have any questions, email Rick Powell at TIPS at rick.powell@tips-usa.com

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9**Choice of Law clauses with TIPS Members**

If the vendor is awarded a contract with TIPS under this solicitation, the vendor agrees to make any Choice of Law clauses in any contract or agreement entered into between the awarded vendor and with a TIPS member entity to read as follows: "Choice of law shall be the laws of the state where the customer resides" or words to that effect.

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0**Venue of dispute resolution with a TIPS Member**

In the event of litigation or use of any dispute resolution model when resolving disputes with a TIPS member entity as a result of a transaction between the vendor and TIPS or the TIPS member entity, the Venue for any litigation or other agreed upon model shall be in the state and county where the customer resides unless otherwise agreed by the parties at the time the dispute resolution model is decided by the parties.

9
1**Automatic renewal of contracts or agreements with TIPS or a TIPS member entity**

This clause **DOES NOT** prohibit multiyear contracts or agreements with TIPS member entities. Because TIPS and TIPS members are governmental entities subject to laws that control appropriations of funds during their fiscal years for contracts and agreements to provide goods and services, does the Vendor agree to limit any automatic renewal clauses of a contract or agreement executed as a result of this TIPS solicitation award to not longer than "month to month" and at the TIPS contracted rate.

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2**Indemnity Limitation with TIPS Members**

Texas and other states restrict by law or state Constitution the ability of a governmental entity to indemnify others. TIPS requires that any contract entered into between a vendor and TIPS or a TIPS Member as a result of an award under this Solicitation limit the requirement that the Customer indemnify the Vendor by either eliminating any such indemnity requirement clauses in any agreements, contracts or other binding documents **OR** by prefacing all indemnity clauses required of TIPS or the TIPS Member entity with the following: "To the extent permitted by the laws or the Constitution of the state where the customer resides, ".

Agreement is a required condition to award of a contract resulting from this Solicitation.

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3**Arbitration Clauses**

Except for certain circumstances, TIPS forbids a mandatory arbitration clause in any contract or agreement entered into between the awarded vendor with TIPS or a TIPS member entity. Does the vendor agree to exclude any arbitration requirement in any contracts or agreement entered into between TIPS or a TIPS member entity through an awarded contract with TIPS?

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4**Required Vendor Sales Reporting**

By responding to this Solicitation, you agree to report to TIPS all sales made under any awarded Agreement with TIPS. Vendor is required to report all sales under the TIPS contract to TIPS. If the TIPS Member entity requesting a price from the awarded Vendor requests the TIPS contract, Vendor must include the TIPS Contract number on any communications with the TIPS Member entity. If awarded, you will be provided access to the Vendor Portal. To report sales, login to the TIPS Vendor Portal and click on the PO's and Payments tab. Pages 3-7 of the [Vendor Portal User Guide](#) will walk you through the process of reporting sales to TIPS. Please refer to the TIPS [Accounting FAQ's](#) for more information about reporting sales and if you have further questions, contact the Accounting Team at accounting@tips-usa.com. The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS Agreement and submitting same to TIPS.

9
5**Upload of Current W-9 Required**

Please note that you are required by TIPS to upload a current W-9 Internal Revenue Service (IRS) Tax Form for your entity. This form will be utilized by TIPS to properly identify your entity. Additionally, if not designated "Confidential" in your proposal response, this W-9 may be accessed by TIPS Members for the purpose of making TIPS purchases from you in the event that you are awarded. If you wish to designate your required W-9 confidential, please do so according to the terms of the Confidentiality Claim Form which is an attachment to this solicitation.

REFERENCES

Please provide three (3) references, preferably from school districts or other governmental entities who have used your services within the last three years. Additional references may be required. DO NOT INCLUDE TIPS EMPLOYEES AS A REFERENCE.

You may provide more than three (3) references.

[illegible]

Required Confidential Information Status Form

Blackboard Inc.

Name of company

Bill Jones - Deputy General Counsel

Printed Name and Title of authorized company officer declaring below the confidential status of material

VA 20190

Address

City

State

ZIP

Phone

ALL VENDORS MUST COMPLETE THE ABOVE SECTION

CONFIDENTIAL INFORMATION SUBMITTED IN RESPONSE TO COMPETITIVE PROCUREMENT REQUESTS OF EDUCATION SERVICE CENTER REGION 8 AND TIPS (ESC8) IS GOVERNED BY TEXAS GOVERNMENT CODE, CHAPTER 552

If you consider any portion of your proposal to be confidential information and not subject to public disclosure pursuant to Chapter 552 Texas Gov't Code or other law(s), you **must attach a copy** of all claimed confidential materials within your proposal and put this **COMPLETED** form as a cover sheet to said materials then scan, name "CONFIDENTIAL" and upload with your proposal submission. (You must include all the confidential information in the submitted proposal. The copy uploaded is to indicate which material in your proposal, if any, you deem confidential in the event the receives a Public Information Request.) ESC8 and TIPS will follow procedures of controlling statute(s) regarding any claim of confidentiality and shall not be liable for any release of information required by law. Upon your claim and your defense to the Office of Texas Attorney General is required to make the final determination whether the information submitted by you and held by ESC8 and TIPS is confidential and exempt from public disclosure.

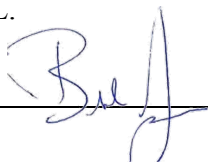
ALL VENDORS MUST COMPLETE ONE OF THE TWO OPTIONS BELOW.**OPTION 1:**

I DO CLAIM parts of my proposal to be confidential and **DO NOT** desire to expressly waive a claim of confidentiality of all information contained within our response to the solicitation. The attached contains material from our proposal that I classify and deem confidential under Texas Gov't Code Sec. 552 or other law(s) and I invoke my statutory rights to confidential treatment of the enclosed materials.

IF CLAIMING PARTS OF YOUR PROPOSAL CONFIDENTIAL, YOU MUST ATTACH THE SHEETS TO THIS FORM AND LIST THE NUMBER OF TOTAL PAGES THAT ARE CONFIDENTIAL.

ATTACHED ARE COPIES OF 2-9 PAGES OF CLAIMED CONFIDENTIAL MATERIAL FROM OUR PROPOSAL THAT WE DEEM TO BE NOT PUBLIC INFORMATION AND WILL DEFEND THAT CLAIM TO THE TEXAS ATTORNEY GENERAL IF REQUESTED WHEN A PUBLIC INFORMATION REQUEST IS MADE FOR OUR PROPOSAL.

Signature _____

Date May 19, 2021**OR****OPTION 2:**

I DO NOT CLAIM any of my proposal to be confidential, complete the section below.

Express Waiver: I desire to expressly waive any claim of confidentiality as to any and all information contained within our response to the competitive procurement process (e.g. RFP, CSP, Bid, RFQ, etc.) by completing the following and submitting this sheet with our response to Education Service Center Region 8 and TIPS.

Signature _____

Date _____